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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

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§ 2410. Guarantee of access to courts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

Many of the state constitutions guarantee open courts and a remedy for injuries, and these guaranties are mandatory.

In a large number of state constitutions, provisions have been inserted to the effect that the courts must be open to every person; that each individual must have a prompt and certain remedy by due course of law for injuries which he or she may receive in his or her person, property, or reputation; that he or she must obtain such remedy freely without being obliged to purchase it; and that justice must be administered without denial, delay, or prejudice.[1] Such guaranties are self-executing,[2] and like other guaranties,[3] such provisions have been held to be mandatory.[4]

Apart from the specific guaranties in the constitutions of particular states, the right to access to courts is a fundamental constitutional right, or a right of citizenship,[5] particularly where a person is asserting claims under the Federal Constitution.[6] Regulations and restrictions which bar adequate, effective, and meaningful access to the courts are unconstitutional.[7]

Footnotes

1 Ark.—Cooper v. Circuit Court of Faulkner County, 2013 Ark. 365, 430 S.W.3d 1 (2013).
Conn.—Gentile v. Altermatt, 169 Conn. 267, 363 A.2d 1 (1975).
Fla.—University of Miami v. Exposito ex rel. Gonzalez, 87 So. 3d 803 (Fla. 3d DCA 2012).
Ill.—Clark v. Children's Memorial Hosp., 2011 IL 108656, 353 Ill. Dec. 254, 955 N.E.2d 1065 (Ill. 2011).
Ind.—Smith v. Indiana Dept. of Correction, 883 N.E.2d 802 (Ind. 2008).
Kan.—Harrison By and Through Harrison v. Long, 241 Kan. 174, 734 P.2d 1155 (1987).
Ky.—Com. ex rel. Tinder v. Werner, 280 S.W.2d 214 (Ky. 1955).
La.—Wall v. Close, 201 La. 986, 10 So. 2d 779 (1942).
Minn.—Payne v. Lee, 222 Minn. 269, 24 N.W.2d 259 (1946).
Miss.—Thomas v. Warden, 999 So. 2d 842 (Miss. 2008).
Mo.—Labrayere v. Bohr Farms, LLC, 2015 WL 1735494 (Mo. 2015).
Neb.—State ex rel. Tyler v. Douglas County Dist. Court, 254 Neb. 852, 580 N.W.2d 95 (1998).
N.H.—State v. DeCato, 156 N.H. 570, 938 A.2d 898 (2007).
N.C.—Veazey v. City of Durham, 231 N.C. 357, 57 S.E.2d 377 (1950).
Ohio—Arbino v. Johnson & Johnson, 116 Ohio St. 3d 468, 2007-Ohio-6948, 880 N.E.2d 420 (2007).
Okla.—Stouffer v. Ward, 1998 OK CIV APP 82, 959 P.2d 985 (Div. 1 1998).
Or.—Tomasek v. State, 196 Or. 120, 248 P.2d 703 (1952).
S.D.—Green v. Siegel, Barnett & Schutz, 1996 SD 146, 557 N.W.2d 396 (S.D. 1996).
Tex.—Gomez v. Pasadena Health Care Management, Inc., 246 S.W.3d 306 (Tex. App. Houston 14th Dist. 2008).
Vt.—Zorn v. Smith, 189 Vt. 219, 2011 VT 10, 19 A.3d 112 (2011).
W. Va.—Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006).
Wis.—Mulder v. Acme-Cleveland Corp., 95 Wis. 2d 173, 290 N.W.2d 276 (1980).

2 Self-executing provisions protecting individual rights, see § 133.

3 Mandatory and directory provisions, see § 138.

4 Neb.—State v. LeGrand, 249 Neb. 1, 541 N.W.2d 380 (1995) (overruled on other grounds by, State v. Louthan, 257 Neb. 174, 595 N.W.2d 917 (1999)).

5 Alaska—Estate of Kim ex rel. Alexander v. Coxe, 295 P.3d 380 (Alaska 2013).
Ga.—Cousins v. Macedonia Baptist Church of Atlanta, 283 Ga. 570, 662 S.E.2d 533 (2008).
Me.—Nader v. Maine Democratic Party, 2012 ME 57, 41 A.3d 551 (Me. 2012).
Mont.—Kloss v. Edward D. Jones & Co., 2002 MT 129, 310 Mont. 123, 54 P.3d 1 (2002), on reh'g in part on other grounds, 2002 MT 129A, 57 P.3d 41 (Mont. 2002).
Utah—Jeffs v. Stubbs, 970 P.2d 1234 (Utah 1998).
Access to courts as within due process guaranty, see § 1912.

6 U.S.—Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057 (9th Cir. 2014); Merrick v. Merrick, 441 F. Supp. 143 (S.D. N.Y. 1977).

Choice of judge

The right to a judicial hearing of claims that constitutional rights have been violated does not include the right to have the determination made by a justice of the defendant's own choosing, or preference.
Me.—State v. Shanahan, 404 A.2d 975 (Me. 1979).

7 Ga.—Howard v. Sharpe, 266 Ga. 771, 470 S.E.2d 678 (1996).

Personal injury action

Statutes that impose procedural bars to access of the courts are unconstitutional, and any law that arbitrarily or unreasonably bars individuals or classes of individuals from accessing the courts in order to enforce recognized causes of action for personal injury violates the open courts provision.
Mo.—Weigand v. Edwards, 296 S.W.3d 453 (Mo. 2009).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

A. Guaranty of Access to Courts and Remedy for Injuries

§ 2411. Guarantee of access to courts—Prisoners

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2325

Generally, prisoners have a constitutional right of reasonable access to the courts.

Prisoners have a constitutional right of reasonable access to the courts,[1] which must not be subject to hindrance or fear of retaliation,[2] although not all limitations infringe on such right.[3] For example, a prisoner does not have a constitutional right to be personally present at every type of hearing,[4] nor does an inmate's constitutional right to bring and maintain a civil action entitle him or her to be transported to court or to have a trial of his or her small claims action held at prison.[5] However, excessive use of sanctions to punish prisoners who bring civil actions in legitimate efforts to clarify existing law may violate a prisoner's right to access to the courts.[6]

An inmate claiming that prison employees have violated his or her constitutional rights by retaliating against the inmate for his or her exercise of a constitutional right, such as accessing the courts, must establish three elements: (1) he or she was engaged in constitutionally protected activity; (2) the prison defendants took adverse action; and (3) the constitutionally protected activity in which the inmate was engaged was a substantial or motivating factor for the defendants' action.[7]

CUMULATIVE SUPPLEMENT

Cases:

Prison officials did not violate inmate's constitutional right of access to the courts when they failed to immediately provide videotape of incident that formed basis of his Eighth Amendment excessive force claim against officer; officials initially mistakenly advised inmate that video no longer existed, but later provided video to inmate when it was later discovered, and inmate was subsequently able to file lawsuit against officer. U.S. Const. Amend. 8. Heyliger v. Krygier, 335 F. Supp. 3d 482 (W.D. N.Y. 2018).

Nebraska statutes governing inmate's right of access to courts and which authorized Department of Correctional Services to promulgate rules and regulations so long as they did not deprive inmate of rights or privileges to which inmate was entitled did not heighten or expand upon right of access to courts guaranteed under First Amendment, and thus, policy promulgated by Department of Correctional Services that prohibited return of inmate's personal typewriter with text memory capabilities after it had been sent out for repairs did not violate inmate's right of access to courts, where prohibition against use of typewriter with text memory capabilities was not atypical, significant deprivation in relation to ordinary incidents of prison life. U.S. Const. Amend. 1; Neb. Rev. Stat. §§ 83-4,111, 83-4,123. Jacob v. Nebraska Department of Correctional Services, 294 Neb. 735, 2016 WL 4718138 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Hudson v. Palmer, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984); Knell v. Bensinger, 489 F.2d 1014 (7th Cir. 1973); Wimberly v. Rogers, 557 F.2d 671 (9th Cir. 1977).
Ill.—People v. Alcozer, 241 Ill. 2d 248, 350 Ill. Dec. 1, 948 N.E.2d 70 (2011).
Federal versus state constitutions
Although the United States Constitution does not have a specific access to courts provision like the state constitution, indigent inmates have a fundamental constitutional right to meaningful access to the courts arising from several federal constitutional provisions.
Okla.—Mehdipour v. State ex rel. Dept. of Corrections, 2004 OK 19, 90 P.3d 546 (Okla. 2004).
Grievance procedures
An inmate's constitutional right of access to courts extends to established prison grievance procedures.
Iowa—Mark v. State, 556 N.W.2d 152 (Iowa 1996).
Provision for assistance
The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.
Conn.—Sadler v. Commissioner of Correction, 100 Conn. App. 659, 918 A.2d 1033 (2007).
Right to seek financial support
U.S.—Butler v. Preiser, 380 F. Supp. 612 (S.D. N.Y. 1974).

2 U.S.—Milhouse v. Carlson, 652 F.2d 371 (3d Cir. 1981); State of N.C. v. Smith, 501 F.2d 613 (4th Cir. 1974).
Conn.—Sadler v. Commissioner of Correction, 100 Conn. App. 659, 918 A.2d 1033 (2007).
Insurmountable obstacle
A statute requiring prisoners who have twice in the preceding three years been permitted to file actions without prepayment of filing fees to submit copies of the complaints or other initial pleadings filed in the preceding five years violated a prisoner's constitutional rights by creating an insurmountable obstacle to his right to access the courts.
Fla.—Mitchell v. Moore, 786 So. 2d 521 (Fla. 2001).

Destruction of papers

Destruction of a plaintiff's legal papers in a surprise search by officials of a federal correctional institution, resulting, as it did, in an impediment to plaintiff's conduct of ongoing court cases, infringed upon the prisoner's constitutional right of access to courts.

U.S.—Steinberg v. Taylor, 500 F. Supp. 477 (D. Conn. 1980).

Library facilities

The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.

Tex.—Musgrove v. State, 425 S.W.3d 601 (Tex. App. Houston 14th Dist. 2014).

3 U.S.—Gittlemacker v. Prasse, 428 F.2d 1 (3d Cir. 1970); Collins v. Cundy, 603 F.2d 825 (10th Cir. 1979).

Frivolous lawsuits

Prisoner did not have constitutional right to prosecute frivolous suit or to proceed in forma pauperis, and prisoner could still pursue his claim if he paid same filing fees as other litigants.

Pa.—Richardson v. Com., Dept. of Corrections, 97 A.3d 430 (Pa. Commw. Ct. 2014), aff'd, 110 A.3d 994 (Pa. 2015).

Library facilities

Prison law libraries and legal assistance programs are not ends in themselves but only the means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts: the touchstone is "meaningful access to the courts," and therefore, the inmate must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.

Conn.—State v. Fernandez, 254 Conn. 637, 758 A.2d 842 (2000).

Mo.—Chrisman v. State, 288 S.W.3d 812 (Mo. Ct. App. S.D. 2009).

In forma pauperis requirements

Ohio—State ex rel. Jefferson v. Ohio Adult Parole Auth., 86 Ohio St. 3d 304, 1999-Ohio-163, 714 N.E.2d 926 (1999).

Colo.—Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394 (Colo. App. 2014).

Pa.—Brown v. PA. Dept. of Corrections, 913 A.2d 301 (Pa. Commw. Ct. 2006).

Filing fees

Ill.—People v. Alcozer, 241 Ill. 2d 248, 350 Ill. Dec. 1, 948 N.E.2d 70 (2011).

The automatic stay provision of the Prison Litigation Reform Act (PLRA), which imposed an automatic stay on prisoner pauper litigation until all costs or fees owed by the prisoner were paid, did not affect any suspect class or involve any fundamental right, and it was rationally related to the legitimate state interest of lessening the burdens presented by nuisance prisoner suits, and thus, the provision neither violated equal protection guarantees nor unconstitutionally impaired prisoner's right of access to the courts.

La.—Warren v. Easter, 914 So. 2d 586 (La. Ct. App. 1st Cir. 2005).

Perfect access not required

Mo.—In re M.A.F. ex rel. Brandon, 232 S.W.3d 640 (Mo. Ct. App. S.D. 2007).

Denial of funding for expert witness

State did not deprive murder defendant who claimed indigency of any of his constitutional rights by requiring that he apply to the office of the public defender (OPD) for representation before he was entitled as an indigent to state-funded expert witness services; defendant could utilize the OPD's complete "package" of services, or forgo them entirely, and while he might face difficult choices, the constitution did not bar state from requiring him to choose between counsel of his choice and ancillary services provided by the OPD.

Md.—Moore v. State, 390 Md. 343, 889 A.2d 325 (2005).

Limiting possession of personal property

W. Va.—State ex rel. James v. Hun, 201 W. Va. 139, 494 S.E.2d 503 (1997).

Monitoring and recording telephone calls

Mass.—Cacicio v. Secretary of Public Safety, 422 Mass. 764, 665 N.E.2d 85 (1996).

4 Cal.—In re Jesusa V., 32 Cal. 4th 588, 10 Cal. Rptr. 3d 205, 85 P.3d 2 (2004).

Tex.—In re A.W., 302 S.W.3d 925 (Tex. App. Dallas 2010).

5 Ind.—Niksich v. Cotton, 810 N.E.2d 1003 (Ind. 2004).

6 Okla.—Shabazz v. Keating, 1999 OK 26, 977 P.2d 1089 (Okla. 1999), as corrected, (Apr. 12, 1999) and as corrected, (July 19, 1999).

7 Pa.—Bussinger v. Dyne, 76 A.3d 137 (Pa. Commw. Ct. 2013).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

A. Guaranty of Access to Courts and Remedy for Injuries

§ 2412. Nature and extent of guaranty of access

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

The constitutional guaranty insuring open courts and a remedy for injuries assures to all a right to prosecute and defend actions and imposes a duty on the court to see that justice prevails.

The constitutional guaranty providing for open courts and insuring a remedy for injuries to person and property is generally regarded as one of the most sacred and essential of all constitutional guaranties.[1] However, the guaranty creates no new rights but merely is declaratory of fundamental principles.[2] A fundamental right to full legal redress is not guaranteed.[3]

The right of access to the courts provides a procedural right to a judicial remedy whenever the legislature creates a substantive right under the law.[4] The guaranty provides access to the courts when a person has a legitimate claim recognized by law.[5] Such judicial access must be adequate, effective, and meaningful.[6] However, the right to a remedy is relative and does not prohibit all impairments of the right of access.[7]

In the light of this guaranty, it is the policy of the law to give every litigant his or her day in court and a full and ample opportunity to be heard.[8] The guaranty insures the right of every person protected by it to seek remedy by court action for any injuries done to him or her, in his or her person or property, and entitles him or her to have justice administered according to law without

denial or delay.[9] In other words, it assures a litigant the right to prosecute an action,[10] provided he or she prosecutes it as contemplated by law,[11] and not in a manner to impede the normal functioning of judicial processes.[12] The right to defend an action also comes within the protection of the guaranty.[13]

The right to a day in court means the right to appear and to be afforded an opportunity to be heard[14] although it does not insure a litigant's actual presentation of the case.[15] At a minimum, a "day in court" means that each party must be afforded the opportunity to present claims and defenses and have them properly adjudicated on the merits according to the facts and the law.[16]

A provision guaranteeing the right to prosecute or defend a cause is not a guaranty of any particular form or method of state procedure.[17] Furthermore, it is not required that a litigant be represented by counsel,[18] but a party may have the right to represent himself or herself.[19] However, the right to reasonable access to the courts is not the same thing as a right to appear personally in court to participate in a lawsuit which has been filed there.[20]

A litigant's right to his or her day in court applies to proceedings before commissions, boards, and bureaus as well as in courts of law.[21] So, where a determination by an administrative officer, board, or agency is a matter within the realm of judicial cognizance, the legislature must provide for judicial review,[22] but this rule is subject to exceptions.[23]

An open court provision does not guarantee that a litigant will win his or her suit.[24] It gives litigants their day in court, but it does not assure them "two days."[25]

The right of access to the state court system is unrestricted by reference to residence or citizenship, and an out-of-state plaintiff has the same rights and duties as a citizen of the state.[26] However, it is not violated by a statute limiting the remedy thereunder to a particular class where excluded classes have other remedies available,[27] or the distinction is not an arbitrary or discriminatory infringement of access to the courts.[28] Moreover, the guaranty does not authorize a person to invoke the jurisdiction of all the courts of the state in a given case.[29] Rather, the provision contemplates that a court whose power to adjudicate the controversy is invoked has jurisdiction to afford the remedy sought and that such jurisdiction or remedy will be invoked by due course of law.[30]

The guaranty imposes on the courts the responsibility of administering the law as between litigants and to see that right and justice prevails.[31]

The guaranty that every person is entitled to "a certain remedy in the laws" for injuries received merely insures to every litigant a day in a court of competent jurisdiction in which he may or may not be successful,[32] while not guaranteeing all persons full compensation for their injuries,[33] and it is not violated by legislative limitations on the amount of recovery in various actions.[34] Such provisions do not mandate that a remedy be provided in any specific form[35] or that the nature of the proof necessary to the award of a judgment or decree continue without modification.[36]

So long as some remedy for an alleged wrong exists, such provisions do not mandate recognition of any new remedy.[37]

The term "remedy" refers both to a remedial process for seeking redress for injury and to what is required to restore a right that has been injured.[38] The phrase "remedy by due course of law" means reparation for injury ordered by a tribunal having jurisdiction in due course of procedure after a fair hearing.[39]

The guaranty of a certain remedy does not guarantee recovery for all injuries regardless of one's own culpability,[40] and a contributory negligence doctrine is not unconstitutional under such a provision.[41] The right to a remedy is not infringed by the dismissal of an insufficient complaint.[42]

Person.

An "open courts provision" means the courts must be accessible to all persons alike without discrimination.[43] The word "person" as used in the constitutional provisions under discussion has been said to include any person who has been permitted peaceably to reside within the borders of the state,[44] aliens illegally in the country,[45] and a corporation[46] although there is authority to the effect that such provision applies only to natural persons.[47]

A viable, unborn child is within the protection of a constitutional provision affording every person a remedy for injury done to him or her in his or her person.[48]

The right of access to the courts is a right shared by all people, including those declared legally incompetent,[49] and includes those who cannot afford the costs of admission.[50]

Attendance by public.

A state constitutional provision for open courts may guarantee a right of public attendance at proceedings,[51] as well as access to records and transcripts that document the proceedings.[52] The burden of persuading the court that the constitutional right to public access to court proceedings or records must be restricted, so as to prevent a threat to an important interest, is generally on the proponent of the restriction, with carefully guarded exceptions.[53]

The public's right of access to courts may be limited to protect other significant and fundamental rights, such as a defendant's right to a fair trial.[54]

Footnotes

1 **Invaluable aspect of jurisprudence**
Cal.—Miller v. R. K. A. Management Corp., 99 Cal. App. 3d 460, 160 Cal. Rptr. 164 (4th Dist. 1979).

2 U.S.—Greater Indianapolis Chapter of N.A.A.C.P. v. Ballard, 741 F. Supp. 2d 925 (S.D. Ind. 2010).
Colo.—Luebke v. Luebke, 143 P.3d 1088 (Colo. App. 2006).
Utah—Puttuck v. Gendron, 2008 UT App 362, 199 P.3d 971 (Utah Ct. App. 2008).

3 Wyo.—Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).
Right limited
Mont.—Schuff v. A.T. Klemens & Son, 2000 MT 357, 303 Mont. 274, 16 P.3d 1002 (2000).

4 Mo.—Weigand v. Edwards, 296 S.W.3d 453 (Mo. 2009).

5 Conn.—Binette v. Sabo, 244 Conn. 23, 710 A.2d 688 (1998).
Mo.—Etling v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771 (Mo. 2003).
Common law
(1) When challenging a statute as unconstitutional under the "open courts provision," the plaintiff must first demonstrate that the statute restricts a well-recognized common law cause of action.
Tex.—Kamel v. University of Texas Health Science Center at Houston, 333 S.W.3d 676 (Tex. App. Houston 1st Dist. 2010).

(2) Where a party does not challenge a legislative act that infringes on a common law cause of action, an open courts challenge is inapplicable.

Tex.—LTTS Charter School, Inc. v. C2 Const., Inc., 358 S.W.3d 725, 277 Ed. Law Rep. 539 (Tex. App. Dallas 2011)

Access to courts to enforce existing rights

Idaho—Osmunson v. State, 135 Idaho 292, 17 P.3d 236, 150 Ed. Law Rep. 950 (2000).

Ind.—VanDam Estate v. Mid-America Sound, 25 N.E.3d 165 (Ind. Ct. App. 2015).

Ohio—Ruther v. Kaiser, 134 Ohio St. 3d 408, 2012-Ohio-5686, 983 N.E.2d 291 (2012).

Equivalent to federal due process clause

Vt.—Quesnel v. Town of Middlebury, 167 Vt. 252, 706 A.2d 436 (1997).

No right to attorney's fees created

Mont.—Schuff v. A.T. Klemens & Son, 2000 MT 357, 303 Mont. 274, 16 P.3d 1002 (2000).

6 Ark.—Cooper v. Circuit Court of Faulkner County, 2013 Ark. 365, 430 S.W.3d 1 (2013).

7 N.H.—Huckins v. McSweeney, 166 N.H. 176, 90 A.3d 1236 (2014).

Not all conditions prohibited

The open courts clause does not prohibit all conditions on access to the courts, but it does prevent the legislature from arbitrarily or unreasonably denying access to the courts to assert a statutory or common law cause of action that is in itself unmodified and unrestricted.

Ind.—Smith v. Indiana Dept. of Correction, 883 N.E.2d 802 (Ind. 2008).

8 Ga.—Cousins v. Macedonia Baptist Church of Atlanta, 283 Ga. 570, 662 S.E.2d 533 (2008).

Mich.—Friedman v. Dozorc, 412 Mich. 1, 312 N.W.2d 585 (1981).

9 Miss.—Thomas v. Warden, 999 So. 2d 842 (Miss. 2008).

Guaranty of prompt justice, see § 2421.

10 Ga.—Smith v. Baptiste, 287 Ga. 23, 694 S.E.2d 83 (2010).

11 La.—Johnson v. Pearce, 313 So. 2d 812 (La. 1975).

N.Y.—Kashdan-Wallerstein v. Malone, 115 Misc. 2d 623, 454 N.Y.S.2d 423 (N.Y. City Civ. Ct. 1982).

Willful abuse of court

The state constitutional right of access to the courts is not unlimited, and litigants are not free to abuse the courts by inundating them with frivolous suits which burden the administration of the courts for no useful purpose.

Vt.—Zorn v. Smith, 189 Vt. 219, 2011 VT 10, 19 A.3d 112 (2011).

12 Colo.—Board of County Com'rs of Boulder County v. Barday, 197 Colo. 519, 594 P.2d 1057 (1979).

13 Alaska—Armstrong v. Tanaka, 228 P.3d 79 (Alaska 2010).

Ga.—Thomas v. Johnson, 329 Ga. App. 601, 765 S.E.2d 748 (2014).

Negligence in pleading

Carelessness and negligence in failing to appear, answer, or otherwise plead to a complaint do not deny a defendant his or her fair day in court.

N.M.—Brown v. Lufkin Foundry & Mach. Co., 83 N.M. 34, 1971-NMCA-116, 487 P.2d 1104 (Ct. App. 1971).

14 Ga.—Thomas v. Johnson, 329 Ga. App. 601, 765 S.E.2d 748 (2014).

Libel or slander claim

Fla.—Finkel v. Sun Tattler Co., Inc., 348 So. 2d 51 (Fla. 4th DCA 1977).

15 U.S.—Mitchell v. National Broadcasting Co., 553 F.2d 265 (2d Cir. 1977).

16 Utah—Miller v. USAA Cas. Ins. Co., 2002 UT 6, 44 P.3d 663 (Utah 2002).

17 **No particular process assured**

Ohio—Johns v. Univ. of Cincinnati Med. Assoc., Inc., 101 Ohio St. 3d 234, 2004-Ohio-824, 804 N.E.2d 19 (2004).

Tex.—Cohen v. Sandcastle Homes, Inc., 2015 WL 832057 (Tex. App. Houston 1st Dist. 2015).

18 U.S.—Munn-Goins v. Board of Trustees of Bladen Community College, 658 F. Supp. 2d 713, 251 Ed. Law Rep. 735 (E.D. N.C. 2009), aff'd, 393 Fed. Appx. 74 (4th Cir. 2010).

Conn.—Oliphant v. Warden, State Prison, 53 Conn. Supp. 194, 80 A.3d 597 (Super. Ct. 2011), appeal dismissed, 146 Conn. App. 499, 79 A.3d 77 (2013), certification denied, 310 Conn. 963, 83 A.3d 346 (2013).

Okla.—Kiddie v. Kiddie, 1977 OK 69, 563 P.2d 139, 85 A.L.R.3d 977 (Okla. 1977).

19 W. Va.—Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006).

Access to information

Fla.—Florida Bar v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978).

Haw.—Doe v. Doe, 118 Haw. 293, 188 P.3d 807 (Ct. App. 2008).

Rule against oral argument

Or.—State ex rel. Reed v. Schwab, 287 Or. 411, 600 P.2d 387, 24 A.L.R.4th 422 (1979).

20 Okla.—Mehdipour v. Wise, 2003 OK 3, 65 P.3d 271 (Okla. 2003), as corrected, (Mar. 6, 2003).

21 Fla.—Samples v. Florida Birth-Related Neurological Injury Comp. Ass'n, 114 So. 3d 912 (Fla. 2013).

Haw.—Lee v. United Public Workers, AFSCME, Local 646, AFL-CIO, 125 Haw. 317, 260 P.3d 1135 (Ct. App. 2011), as corrected, (Aug. 4, 2011).

Administrative forum

The right of access to the courts extends to the constitutional right to petition administrative tribunals.

Cal.—California Teachers Ass'n v. State of California, 20 Cal. 4th 327, 84 Cal. Rptr. 2d 425, 975 P.2d 622, 138 Ed. Law Rep. 1147 (1999).

22 Md.—Criminal Injuries Compensation Bd. v. Gould, 273 Md. 486, 331 A.2d 55 (1975).

Review of judicial proceedings, see § 2423.

23 Or.—Ortwein v. Schwab, 262 Or. 375, 498 P.2d 757 (1972), judgment aff'd, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973).

Tex.—Ex parte Geiken, 28 S.W.3d 553 (Tex. Crim. App. 2000).

Waiver of right

Utah—Miller v. USAA Cas. Ins. Co., 2002 UT 6, 44 P.3d 663 (Utah 2002).

24 S.D.—Hopewell v. Midcontinent Broadcasting Corp., 538 N.W.2d 780 (S.D. 1995).

Losing vs. denial of access

One is not entitled to access to the courts merely to argue that there might be some remote possibility of some constitutional violation; said simply, losing in court is not the same as being denied access to the courts.

Ga.—Owens v. Hill, 295 Ga. 302, 758 S.E.2d 794 (2014), cert. denied, 135 S. Ct. 449, 190 L. Ed. 2d 340 (2014).

25 Tex.—Marange v. Marshall, 402 S.W.2d 236 (Tex. Civ. App. Corpus Christi 1966), writ refused n.r.e., (Oct. 5, 1966).

Claim preclusion

Utah—Miller v. USAA Cas. Ins. Co., 2002 UT 6, 44 P.3d 663 (Utah 2002).

Vt.—Faulkner v. Caledonia County Fair Ass'n, 178 Vt. 51, 2004 VT 123, 869 A.2d 103 (2004).

Right to relitigate issue

While the state constitution guarantees every person access to the courts, it does not grant a person license to relitigate a cause or to burden the resources of the court with successive claims.

Mont.—Langemeier v. Kuehl, 2001 MT 306, 307 Mont. 499, 40 P.3d 343 (2001).

26 Mont.—Stevens v. Novartis Pharmaceuticals Corp., 2010 MT 282, 358 Mont. 474, 247 P.3d 244 (2010).

27 U.S.—Gonzalez-Gomez v. Brownell, 114 F. Supp. 660 (S.D. Cal. 1953).

Reasonable classification

Md.—Jackson v. Dackman Co., 422 Md. 357, 30 A.3d 854 (2011).

28 Mo.—Weigand v. Edwards, 296 S.W.3d 453 (Mo. 2009).

N.H.—Minuteman, LLC v. Microsoft Corp., 147 N.H. 634, 795 A.2d 833 (2002).

Classification related to legislative purpose

Ga.—Dee v. Sweet, 268 Ga. 346, 489 S.E.2d 823 (1997).

29 Cal.—Schenley Affiliated Brands Corp. v. Kirby, 21 Cal. App. 3d 177, 98 Cal. Rptr. 609 (3d Dist. 1971).

30 **Tax court**

Minn.—Wulff v. Tax Court of Appeals, 288 N.W.2d 221 (Minn. 1979).

31 Wash.—Iverson v. Marine Bancorporation, 83 Wash. 2d 163, 517 P.2d 197 (1973).

Fashioning of remedy

Cal.—In re Pfeiffer, 264 Cal. App. 2d 470, 70 Cal. Rptr. 831 (1st Dist. 1968).

32 Or.—Marquam Inv. Corp. v. Beers, 47 Or. App. 711, 615 P.2d 1064 (1980).

Meaningful opportunity for remedial action

Ohio—State ex rel. Sysco Food Serv. of Cleveland, Inc. v. Indus. Comm., 89 Ohio St. 3d 612, 2000-Ohio-1, 734 N.E.2d 361 (2000).

Definition of remedy

Open courts provision of state constitution does not specify any particular remedy for any particular wrong; rather, it leaves the definition of wrongs and the specification of remedies to the legislature and the common law.

Ind.—VanDam Estate v. Mid-America Sound, 25 N.E.3d 165 (Ind. Ct. App. 2015).

33 N.H.—Cargill's Estate v. City of Rochester, 119 N.H. 661, 406 A.2d 704 (1979).

34 N.H.—Cargill's Estate v. City of Rochester, 119 N.H. 661, 406 A.2d 704 (1979).

35 Ill.—Segers v. Industrial Com'n, 191 Ill. 2d 421, 247 Ill. Dec. 433, 732 N.E.2d 488 (2000).

Wis.—Metzger v. Wisconsin Dept. of Taxation, 35 Wis. 2d 119, 150 N.W.2d 431 (1967).

36 Ill.—Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972).

Burden of proof

The fact that a statute increases the standard of proof needed for a common law claim does not compromise the right of access to courts; it is within the realm of the legislature's authority to impose a heightened burden of proof.

Wash.—Spratt v. Toft, 180 Wash. App. 620, 324 P.3d 707 (Div. 1 2014).

37 Ill.—Pantone v. Demos, 59 Ill. App. 3d 328, 16 Ill. Dec. 607, 375 N.E.2d 480 (1st Dist. 1978).

38 Or.—Smothers v. Gresham Transfer, Inc., 332 Or. 83, 23 P.3d 333 (2001).

39 Kan.—Noel v. Menninger Foundation, 175 Kan. 751, 267 P.2d 934 (1954).

Questioning of witnesses

Fla.—Kirkland v. State, 185 So. 2d 5 (Fla. 2d DCA 1966).

40 Ill.—Angelini v. Snow, 58 Ill. App. 3d 116, 15 Ill. Dec. 780, 374 N.E.2d 215 (1st Dist. 1978).

41 Ill.—Angelini v. Snow, 58 Ill. App. 3d 116, 15 Ill. Dec. 780, 374 N.E.2d 215 (1st Dist. 1978).

42 Ill.—Berlin v. Nathan, 64 Ill. App. 3d 940, 21 Ill. Dec. 682, 381 N.E.2d 1367 (1st Dist. 1978).

43 Me.—Nader v. Maine Democratic Party, 2012 ME 57, 41 A.3d 551 (Me. 2012).

44 Ohio—Leiberg v. Vitangeli, 70 Ohio App. 479, 25 Ohio Op. 211, 47 N.E.2d 235 (5th Dist. Stark County 1942).

45 Wis.—Arteaga v. Literski, 83 Wis. 2d 128, 265 N.W.2d 148 (1978).

46 Ohio—Home Owners' Loan Corp. v. Sherwin, 59 Ohio App. 567, 13 Ohio Op. 303, 18 N.E.2d 992 (6th Dist. Lucas County 1938).

47 Wis.—Jadair Inc. v. U.S. Fire Ins. Co., 209 Wis. 2d 187, 562 N.W.2d 401 (1997).

Insurance commissioner

As a creature of the state, rather than a "person," an insurance commissioner has no constitutional right of access to the courts.

La.—Wooley v. State Farm Fire and Cas. Ins. Co., 893 So. 2d 746 (La. 2005).

48 Or.—Libbee v. Permanente Clinic, 268 Or. 258, 518 P.2d 636 (1974).

49 Conn.—Luster v. Luster, 128 Conn. App. 259, 17 A.3d 1068 (2011).

50 Tex.—Higgins v. Randall County Sheriff's Office, 257 S.W.3d 684 (Tex. 2008).

51 **Qualified right**

Ariz.—KPNX-TV Channel 12 v. Stephens, 236 Ariz. 367, 340 P.3d 1075 (Ct. App. Div. 1 2014).

Ohio—State ex rel. Plain Dealer Publishing Co. v. Geauga Cty. Court of Common Pleas, Juv. Div., 90 Ohio St. 3d 79, 2000-Ohio-35, 734 N.E.2d 1214 (2000).

Wash.—State v. Filitaula, 184 Wash. App. 819, 339 P.3d 221 (Div. 1 2014).

W. Va.—State ex rel. Garden State Newspapers, Inc. v. Hoke, 205 W. Va. 611, 520 S.E.2d 186, 138 Ed. Law Rep. 945 (1999).

A.L.R. Library

Propriety of exclusion of press or other media representatives from civil trial, 39 A.L.R.5th 103.

52 N.H.—State v. DeCato, 156 N.H. 570, 938 A.2d 898 (2007).

Limitation of presumptive right

Although the open courts provision of the state constitution gives the public a presumptive right of access to civil court proceedings and records, the trial court may limit this right when there is a compelling countervailing public interest and closure of the court proceedings or sealing of documents is required to protect such countervailing public interest.

N.C.—Virmani v. Presbyterian Health Services Corp., 350 N.C. 449, 515 S.E.2d 675 (1999).

Civil and criminal proceedings

Wash.—In re Adoption of M.S.M.-P., 181 Wash. App. 301, 325 P.3d 392 (Div. 1 2014), review granted, 182 Wash. 2d 1001, 342 P.3d 326 (2015).

53 Wash.—Dreiling v. Jain, 151 Wash. 2d 900, 93 P.3d 861 (2004).

54 Wash.—State, Dept. of Social and Health Services v. Parvin, 181 Wash. App. 663, 326 P.3d 832 (Div. 1 2014).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

A. Guaranty of Access to Courts and Remedy for Injuries

§ 2413. Application of guaranty to judiciary, legislature, or executive

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

In some states, the constitutional guaranty insuring open courts and a remedy for injuries is a limitation on the judiciary only and has no application to the legislative branch of the government, but in other states, the guaranty is held applicable to the legislative, executive, and administrative departments as well as to the judiciary.

In some states, the constitutional guaranty insuring open courts and a remedy for injuries is a limitation on the judiciary only and has no application to the legislative branch of the government.[1] However, in other jurisdictions, the guaranty is a restriction on the legislative, executive, and administrative departments of government as well as on the judiciary.[2]

The guaranty does not authorize the creation of rights of action by the courts[3] and does not limit the power of the legislature to enact remedial laws.[4]

CUMULATIVE SUPPLEMENT

Cases:

Hernia provision of the State Administrative Workers' Compensation Act, which placed a six-week limit on temporary total disability (TTD) benefits for hernias, did not deny claimant an adequate remedy in violation of the State constitution's right for remedy guaranty; amounts of benefits to be received for specific injuries was the prerogative of the Legislature, and such limitations made no attempt to change benefits after a right to those benefits had vested. Okla. Const. art. 2, § 6; 85A Okla. Stat. Ann. § 61. Graham v. D & K Oilfield Services, Inc., 2017 OK 72, 404 P.3d 863 (Okla. 2017).

[END OF SUPPLEMENT]

Footnotes

1 Okla.—Rivas v. Parkland Manor, 2000 OK 68, 12 P.3d 452 (Okla. 2000).
Wyo.—Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).
No guaranty against legislative limitation of right
Mo.—Wheeler v. Briggs, 941 S.W.2d 512 (Mo. 1997).
Responsibility of court
Idaho—Venters v. Sorrento Delaware, Inc., 141 Idaho 245, 108 P.3d 392 (2005).
S.D.—Kyllo v. Panzer, 535 N.W.2d 896 (S.D. 1995).

2 Del.—Gallegher v. Davis, 37 Del. 380, 183 A. 620 (Super. Ct. 1936) (overruled in part on other grounds by, Wagner v. Shanks, 56 Del. 555, 194 A.2d 701 (1963)).

3 Ark.—Hardin v. City of Devalls Bluff, 256 Ark. 480, 508 S.W.2d 559 (1974).

4 Ark.—Hardin v. City of Devalls Bluff, 256 Ark. 480, 508 S.W.2d 559 (1974).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

A. Guaranty of Access to Courts and Remedy for Injuries

§ 2414. Injury within guaranty

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

The constitutional guaranty providing for open courts and insuring a remedy for injuries does not guarantee a remedy for every injury but applies only to such injuries as constitute violations of established law of which the courts can properly take cognizance.

Only an injury constituting a violation of established law of which the court can properly take cognizance is within the protection of the constitutional guaranty insuring a remedy for "injuries" to person and property.[1] The constitutional provision does not guarantee a remedy for every injury,[2] but only such as results from an invasion or an infringement of a legal right or a failure to discharge a legal duty,[3] or, more specifically, an invasion of legal rights recognized at the time of the adoption of the constitution[4] or thereafter created[5] and still in existence at the time the alleged invasion occurred.[6] The rights which are protected are personal and property rights and not political rights.[7]

The constitutional right of access to courts is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court.[8] Thus, if the law provides no remedy, the "remedy by due course of law" provision of a state constitution does not require that there be one.[9]

A necessary prerequisite to state constitutional requirement that all courts be open and that every person have a remedy for an injury done to him is that a person must suffer a cognizable "injury."[10] For purposes of a constitutional right-of-access-to-courts claim, actual injury is a jurisdictional requirement that flows from the standing doctrine. It may not be waived and requires actual prejudice with respect to the contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim.[11]

A plaintiff alleging denial of the constitutional right of access to the courts must have an arguable, nonfrivolous underlying cause of action.[12] The right of access to the courts is limited to those individuals who actually have a viable claim because the right is inextricably connected with that claim.[13] Therefore, when a litigant's claims are transferred to another, the constitutional right to access the courts to litigate those claims is transferred with the claims.[14]

The guaranty insuring a remedy for injuries gives a remedy for the arbitrary or unreasonable exercise of power.[15] The guaranty ensures that rights belonging to citizens are not illegally or arbitrarily denied by the government.[16]

Forward- or backward-looking injuries

Generally, the right-to-a-remedy provisions of state constitutions apply only to existing, vested rights, and it is state law which determines what injuries are recognized and what remedies are available.[17]

Claims alleging denial of the constitutional right of access to the courts may be forward-looking or backward-looking.[18] In forward-looking claims, the plaintiff accuses the government of creating or maintaining some frustrating condition that stands between the plaintiff and the courthouse door, and the object of the suit is to eliminate the condition, thereby allowing the plaintiff, usually an inmate, to sue on some underlying legal claim.[19] In backward-looking claims, the government is accused of barring the courthouse door by concealing or destroying evidence so that the plaintiff is unable to ever obtain an adequate remedy on the underlying claim.[20]

CUMULATIVE SUPPLEMENT

Cases:

Alleged actions of county and county planning commission, in delaying to act on property developers' water and sewer change application, did not violate provision of Maryland Constitution guaranteeing the right to a remedy by the course of the law of the land, despite developers' arguments that county and commission essentially immunized themselves from due process claims by preventing developers' property rights from vesting; county and commission simply exercised discretion vested in them by master plan governing zoning requirements for developers' property. U.S. Const. Amend. 14; Md. Const. Declaration of Rights, art. 19. Pulte Home Corporation v. Montgomery County, Maryland, 909 F.3d 685 (4th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 N.J.—Rybeck v. Rybeck, 141 N.J. Super. 481, 358 A.2d 828 (Law Div. 1976).
Wis.—Oliver v. Travelers Ins. Co., 103 Wis. 2d 644, 309 N.W.2d 383 (Ct. App. 1981).
Legally cognizable causes of action

S.D.—Hancock v. Western South Dakota Juvenile Services Center, 2002 SD 69, 647 N.W.2d 722 (S.D. 2002).

2 La.—Whitnell v. Silverman, 686 So. 2d 23 (La. 1996).

3 U.S.—Mobile Mechanical Contractors Ass'n, Inc. v. Carlough, 456 F. Supp. 310 (S.D. Ala. 1978), judgment aff'd in part, rev'd in part on other grounds, 664 F.2d 481 (5th Cir. 1981).

Okla.—Nash v. Baker, 1974 OK CIV APP 19, 522 P.2d 1335 (Ct. App. Div. 1 1974).

4 Or.—Smothers v. Gresham Transfer, Inc., 332 Or. 83, 23 P.3d 333 (2001).

Civil causes of action

The constitutional provision establishing a right to justice without delay preserves the right to a remedy by due course of law only as to civil causes of action that were recognized as justiciable by the common law as it existed at time the constitution was adopted.

Kan.—Lemuz By and Through Lemuz v. Fieser, 261 Kan. 936, 933 P.2d 134 (1997).

Scope of protection

The scope of protections afforded by such provision must be viewed in light of the immunities that were recognized when the constitution was adopted, including governmental immunity, charitable enterprise immunity, family immunity, and restrictions on legal remedies for some persons, such as married women.

Utah—DeBry v. Noble, 889 P.2d 428 (Utah 1995).

5 U.S.—Ellison v. Northwest Engineering Co., 521 F. Supp. 199, 32 U.C.C. Rep. Serv. 73 (S.D. Fla. 1981).

Counterclaims

Mo.—Renfrow v. Gojohn, 600 S.W.2d 77 (Mo. Ct. App. W.D. 1980).

6 **Redefinition or abolition of definitions of injury**

Conn.—Gentile v. Altermatt, 169 Conn. 267, 363 A.2d 1 (1975).

7 Ark.—McFarlin v. Kelly, 246 Ark. 1237, 442 S.W.2d 183 (1969).

8 U.S.—Christopher v. Harbury, 536 U.S. 403, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002).

9 Ind.—McIntosh v. Melroe Co., a Div. of Clark Equipment Co., Inc., 729 N.E.2d 972 (Ind. 2000).

Wrongful death

The open courts provision of the constitution has no applicability whatsoever to a cause of action for wrongful death inasmuch as such a cause of action did not exist at common law.

Tex.—Travelers Indem. Co. of Illinois v. Fuller, 892 S.W.2d 848 (Tex. 1995).

Punitive damages

N.C.—Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1 (2004).

10 Conn.—Morris v. Hartford Courant Co., 200 Conn. 676, 513 A.2d 66 (1986).

11 U.S.—Nevada Dept. of Corrections v. Greene, 648 F.3d 1014 (9th Cir. 2011).

12 U.S.—Flagg v. City of Detroit, 715 F.3d 165, 91 Fed. R. Evid. Serv. 263, 85 Fed. R. Serv. 3d 692 (6th Cir. 2013).

13 Utah—Applied Medical Technologies, Inc. v. Eames, 2002 UT 18, 44 P.3d 699 (Utah 2002).

14 Utah—Applied Medical Technologies, Inc. v. Eames, 2002 UT 18, 44 P.3d 699 (Utah 2002).

15 La.—Mulina v. Item Co., 217 La. 842, 47 So. 2d 560 (1950).

N.J.—Grogan v. DeSapio, 15 N.J. Super. 604, 83 A.2d 809 (Law Div. 1951).

16 Md.—Piselli v. 75th Street Medical, 371 Md. 188, 808 A.2d 508 (2002).

Purpose of provision

The purpose of such constitutional provisions providing that every subject of the state is entitled to recourse to the laws for injuries he might receive is to make civil remedies readily available and to guard against arbitrary and discriminatory infringements on access to the courts.

N.H.—Town of Nottingham v. Newman, 147 N.H. 131, 785 A.2d 891 (2001).

17 Ohio—Groch v. Gen. Motors Corp., 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377 (2008).

18 U.S.—Flagg v. City of Detroit, 715 F.3d 165, 91 Fed. R. Evid. Serv. 263, 85 Fed. R. Serv. 3d 692 (6th Cir. 2013).

19 U.S.—Flagg v. City of Detroit, 715 F.3d 165, 91 Fed. R. Evid. Serv. 263, 85 Fed. R. Serv. 3d 692 (6th Cir. 2013).

Object of suit

The object of this type of suit is to place the plaintiff in a position to pursue a separate claim for relief once the frustrating condition has been removed.

U.S.—Sousa v. Marquez, 702 F.3d 124 (2d Cir. 2012).

20 U.S.—Flagg v. City of Detroit, 715 F.3d 165, 91 Fed. R. Evid. Serv. 263, 85 Fed. R. Serv. 3d 692 (6th Cir. 2013).

Allegations

To allege a compensable injury, a plaintiff claiming a backwards-looking denial of court access must identify a remedy that may be awarded as recompense but not otherwise available in some suit that may yet be brought.

U.S.—Lynch v. Barrett, 703 F.3d 1153 (10th Cir. 2013), cert. denied, 133 S. Ct. 2352, 185 L. Ed. 2d 1078 (2013).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

A. Guaranty of Access to Courts and Remedy for Injuries

§ 2415. Abolition or change of remedy

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

The constitutional guaranty insuring open courts and affording a remedy for injuries does not bar the legislature from modifying a remedy where it deems such modification to be necessary and proper; however, courts disagree as to whether such a guaranty is intended to prohibit the legislature from abolishing or destroying a common law remedy for a particular injury without substituting an adequate remedy in its place.

Although the constitutional guaranty insuring open courts and affording a remedy for injuries to person and property does not bar the legislature from modifying a remedy when it deems such modification to be necessary and proper,[1] it is intended, in some jurisdictions, to preserve the common law rights of action for injury to person or property by prohibiting the legislature from absolutely abolishing or denying a common law remedy for injuries to person or property,[2] at least in the absence of a reasonable alternative to protect the rights of the people unless there is an overpowering public necessity to do so.[3] Thus, if the legislature abolishes a common law cause of action for an injury to one of the rights that the remedy clause protects, then either a legislatively substituted remedial process must be available for that injury[4] or the legislation must eradicate or ameliorate a perceived social evil.[5] However, legislative abrogation of an existing legal remedy to eliminate a clear social or economic evil will violate the open courts clause if it constitutes an arbitrary or unreasonable means for achieving that objective.[6]

To abolish a common law claim, states must provide a reasonable alternative remedy or commensurate benefit or an overpowering public necessity and no alternative method of meeting such public necessity.[7]

In some jurisdictions, the provision does not require a substitute remedy unless legislative action has abolished or totally eliminated a previously recognized cause of action,[8] in which case no substitute remedy need be supplied by legislation which only reduces but does not destroy a cause of action.[9] In other jurisdictions, however, the restriction or regulation of a remedy protected by the provision requires that the legislature provide an adequate substitute remedy to replace the remedy which has been restricted.[10] Thus, the legislature has the authority to limit statutory remedies as long as it does not leave the injured party entirely without a remedy.[11] However, just as the legislature cannot deny a remedy entirely for injury to constitutionally protected common law rights, neither can it substitute an emasculated remedy that is incapable of restoring the right that has been injured.[12]

Under some authorities, the legislature may abolish a common law remedy entirely where the guaranty is a limitation on the judiciary only.[13] In such states, the guaranty is regarded as not undertaking to preserve existing duties and corresponding rights of action for breach thereof against legislative change made before a breach has occurred.[14]

Under the view that a provision of the type under consideration is directed toward the preservation of procedural rights,[15] the abolition or alteration of common law substantive rights is not prohibited,[16] particularly where the right did not exist before the adoption of the constitution.[17] So, also, the provision applies only to forbid the abolition of preexisting common law or statutory rights[18] and is not implicated where, in the absence of the statute conferring the right, there would be no effective remedy, albeit limited, to recover on the claims at issue.[19]

Where a common law remedy for injuries to person or property is altered or abolished by statute, but a substantially adequate remedy remains or is substituted in its stead, the guaranty is unaffected.[20] In any event, the right to a remedy cannot be curtailed after the injury has occurred and a right of action vested, regardless of the source of the duty breached, provided it remained in existence when the breach occurred.[21] If a state constitutional right to a remedy by the course of the law of the land provides a degree of protection for causes of action which have not accrued at the time of the challenged governmental action, it provides greater protection for a cause of action that has already accrued when the challenged governmental action occurred.[22]

The abrogation of affirmative defenses does not violate an access to courts provision of a state constitution.[23]

Automobile guest statutes.

Various statutes, altering the common law liability of an owner or operator of a motor vehicle to a guest for negligence, have been held to change the degree of proof essential to a recovery for damages but not take away the remedy.[24] However, such legislation has been upheld as against the same constitutional objection where the statute merely exempts the owner or operator of an automobile from liability for ordinary negligence but subjects him to civil responsibility for intentional, wanton, or reckless acts.[25]

Workers' compensation acts.

Workers' compensation acts have been held not to be inconsistent with the constitutional guaranty insuring a remedy for injuries to person and property,[26] and the rule has been applied to statutes immunizing an employer from liability to a third person[27] although there is some authority to the contrary regarding this issue,[28] immunizing coemployees from suit if the injury is

compensable,[29] and rendering unnecessary the making of refunds of benefits voluntarily paid and received in good faith.[30] However, any statute or court decision which deprives an employee of the right to full legal redress, as defined by the general tort law of the state against third parties, is absolutely prohibited.[31] If a workers' compensation claim alleging an injury to a right that is protected by the remedy clause is denied for failure to prove that the work-related incident giving rise to the claim was the major contributing cause of the injury or condition for which the worker seeks compensation, then the exclusive remedy provisions of workers compensation statute are unconstitutional under the remedy clause.[32] Determining whether the exclusive remedy provisions of the workers' compensation statute violates the remedy clause involves a case-by-case analysis,[33] and in considering an open courts challenge to a current Workers' Compensation Act, the court is required to compare the current act to the common law remedy, not to a previous statute.[34]

Liability of governmental agencies.

The doctrine of sovereign immunity, or a statute affirming it, does not violate the guaranty of the open courts provision of a state constitution.[35] and it is also not violated by provisions either exempting a public entity from liability under certain circumstances,[36] or limiting its liability.[37] Acts that are core governmental functions and are unique to government are outside the protection of such provision.[38] However, statutes that purport to extend sovereign immunity to state employees performing ministerial functions violate the open courts provision of a state constitution,[39] and an amendment to an immunity statute that defines all municipal action as governmental action, regardless of its nature, violates such provision,[40] at least in the absence of a constitutional amendment authorizing the legislature to change the common law classifications of municipal functions as proprietary or governmental, and thus to grant municipalities immunity from certain suits that could have been maintained at common law.[41]

It has been held that statutes which attempt to expand sovereign immunity to municipalities acting in a proprietary capacity of constructing, maintaining, and operating parks, playgrounds, and pools violates the open courts provision.[42]

The restriction or abolition of tort immunity raises no constitutional issue under an open courts provision because such restriction or abolition serves only to enhance, not diminish, the rights protected by that provision.[43]

Repeal of statute giving remedy.

A constitutional provision insuring a certain remedy for all injuries or wrongs does not command continuation of a specific statutory remedy.[44] However, in a jurisdiction wherein the constitutional guaranty applies to the legislature as well as to the judiciary, it has been held that the guaranty precludes the repeal of a statute allowing a remedy where the statute was in force at the time of the adoption of the constitution,[45] or unless it can show an overpowering public necessity for the abolition of such rights, and that no alternative method of meeting such public necessity can be shown.[46]

However, since it retains the power to provide reasonable alternatives to the enforcement of the rights to which the remedy is directed, the legislature may, where such reasonable alternatives are created, restrict or abolish the incorporated statutory rights.[47] Even a constitutional provision empowering the legislature to repeal or alter any act giving the chancery court jurisdiction does not authorize the legislature to restrict chancery jurisdiction to less than it was when the constitution vesting certain jurisdiction in a chancellor was adopted.[48]

CUMULATIVE SUPPLEMENT

Cases:

Extension of immunity provision of Indiana Tort Claims Act to charter school and its organizer did not violate open courts clause; extension was a rational means to achieve legitimate legislative goal of protecting public treasury. Ind. Const. art. 1, § 12; Ind. Code Ann. §§ 34-6-2-49(a), 34-13-3-3. Flanner House of Indianapolis, Inc. v. Flanner House Elementary School, Inc., 88 N.E.3d 242, 350 Ed. Law Rep. 430 (Ind. Ct. App. 2017).

In determining whether legislation violates the constitution's open courts clause, if legislature has abrogated a cause of action and there is no alternative remedy, court looks to see if there is a clear social or economic evil to be eliminated and if the elimination of an existing legal remedy is not an arbitrary or unreasonable means for eliminating such evil; if no clear social or economic evil is being eliminated, then the legislative act runs afoul of the open courts clause. Utah Const. art. 1, § 11. Rutherford v. Talisker Canyons Finance, Co., LLC, 2019 UT 27, 445 P.3d 474 (Utah 2019).

[END OF SUPPLEMENT]

Footnotes

1 Colo.—Shoemaker v. Mountain States Tel. & Tel. Co., 38 Colo. App. 321, 559 P.2d 721 (App. 1976).
Mo.—Snodgras v. Martin & Bayley, Inc., 204 S.W.3d 638 (Mo. 2006).
Limitations on remedies permitted
Limiting or restricting available remedies does not violate aspirational goal of providing every person certain remedy in laws for all injuries and wrongs which he or she receives to his or her person, privacy, property, or reputation and to provide justice by law, freely, completely, and promptly.
Ill.—People v. Averett, 237 Ill. 2d 1, 340 Ill. Dec. 180, 927 N.E.2d 1191 (2010).

2 Conn.—Binette v. Sabo, 244 Conn. 23, 710 A.2d 688 (1998).
Ky.—Bishop v. Manpower, Inc. of Cent. Kentucky, 211 S.W.3d 71 (Ky. Ct. App. 2006).
Antiabrogation clause
Ariz.—Baker v. University Physicians Healthcare, 231 Ariz. 379, 296 P.3d 42 (2013).

3 Fla.—Kluger v. White, 281 So. 2d 1 (Fla. 1973).
Tex.—In re Dean, 393 S.W.3d 741 (Tex. 2012).
Reasonableness of alternative
Conn.—Mello v. Big Y Foods, Inc., 265 Conn. 21, 826 A.2d 1117 (2003).
Tex.—Tenet Hospitals Ltd. v. Rivera, 445 S.W.3d 698 (Tex. 2014).
Substituted remedial process
Or.—Smothers v. Gresham Transfer, Inc., 332 Or. 83, 23 P.3d 333 (2001).
Legitimate legislative goal
Ind.—VanDam Estate v. Mid-America Sound, 25 N.E.3d 165 (Ind. Ct. App. 2015).

4 Minn.—Schermer v. State Farm Fire and Cas. Co., 721 N.W.2d 307 (Minn. 2006).
Or.—Smith v. Department of Corrections, 219 Or. App. 192, 182 P.3d 250 (2008).
Alternative need not be exact equivalent of abolished right or remedy
Conn.—Mello v. Big Y Foods, Inc., 265 Conn. 21, 826 A.2d 1117 (2003).

5 Utah—Tindley v. Salt Lake City School Dist., 2005 UT 30, 116 P.3d 295, 200 Ed. Law Rep. 406 (Utah 2005) (holding modified on other grounds by, Moss v. Pete Suazo Utah Athletic Com'n, 2007 UT 99, 175 P.3d 1042 (Utah 2007)).
Valid exercise of police power
Ala.—Kruszewski v. Liberty Mut. Ins. Co., 653 So. 2d 935 (Ala. 1995).
State constitution prohibits the legislature from arbitrarily eliminating a cause of action unless it is a reasonable exercise of the legislature's police power in providing for the public's general welfare.

Ill.—Berz v. City of Evanston, 2013 IL App (1st) 123763, 375 Ill. Dec. 422, 997 N.E.2d 733 (App. Ct. 1st Dist. 2013), appeal denied, 378 Ill. Dec. 229, 3 N.E.3d 794 (Ill. 2014).

6 Utah—Tindley v. Salt Lake City School Dist., 2005 UT 30, 116 P.3d 295, 200 Ed. Law Rep. 406 (Utah 2005) (holding modified by, Moss v. Pete Suazo Utah Athletic Com'n, 2007 UT 99, 175 P.3d 1042 (Utah 2007)).

Two-part showing

For the open courts provision of a state constitution to apply, the litigant must have a cognizable common law cause of action that is being restricted and show that the restriction is unreasonable or arbitrary when balanced against the statute's purpose.

Tex.—Yancy v. United Surgical Partners Intern., Inc., 236 S.W.3d 778 (Tex. 2007).

Wyo.—Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).

7 Fla.—Samples v. Florida Birth-Related Neurological, 40 So. 3d 18 (Fla. 5th DCA 2010), decision approved, 114 So. 3d 912 (Fla. 2013).

8 Fla.—Amorin v. Gordon, 996 So. 2d 913 (Fla. 4th DCA 2008).

9 Fla.—Alterman Transport Lines, Inc. v. State, 405 So. 2d 456 (Fla. 1st DCA 1981).

10 Or.—Juarez v. Windsor Rock Products, Inc., 341 Or. 160, 144 P.3d 211 (2006).

Effective and reasonable alternative remedy

In order to comport with the open courts clause the constitution, a statute that limits a right to a remedy for injury to person, property, or reputation must provide the injured person an effective and reasonable alternative remedy by due course of law or, if it does not, must serve to eliminate a clear, social, or economic evil through nonarbitrary and reasonable means.

Utah—Craftsman Builder's Supply, Inc. v. Butler Mfg. Co., 1999 UT 18, 974 P.2d 1194 (Utah 1999).

Quid pro quo test

The court employs a quid pro quo analysis to determine whether a statute unconstitutionally infringes the right to a remedy.

Kan.—Miller v. Johnson, 295 Kan. 636, 289 P.3d 1098 (2012).

11 **Alteration of recovery schemes**

Ariz.—Cronin v. Sheldon, 195 Ariz. 531, 991 P.2d 231 (1999).

Statutory cap on damages permitted

Alaska—Evans ex rel. Kutch v. State, 56 P.3d 1046 (Alaska 2002).

Statutory cap not exclusive

When a plaintiff asserts a claim against a public body and a negligent agent or employee of that public body and the damages claim measurably exceeds the tort claims act cap for the public body, the plaintiff must be able to proceed against the negligent individual to avoid a violation of the remedy clause.

U.S.—Johnson v. Gibson, 918 F. Supp. 2d 1075 (D. Or. 2013).

Punitive damages deemed rendered in favor of state

Mo.—Fust v. Attorney General for the State of Mo., 947 S.W.2d 424 (Mo. 1997).

Or.—DeMendoza v. Huffman, 334 Or. 425, 51 P.3d 1232 (2002).

12 Or.—Smothers v. Gresham Transfer, Inc., 332 Or. 83, 23 P.3d 333 (2001).

Amendments to remedy

The legislature, once having established a substitute remedy, cannot constitutionally proceed to emasculate the remedy, by amendments, to a point where it is no longer a viable and sufficient substitute remedy.

Kan.—Bair v. Peck, 248 Kan. 824, 811 P.2d 1176 (1991).

13 Idaho—Osmunson v. State, 135 Idaho 292, 17 P.3d 236, 150 Ed. Law Rep. 950 (2000).

Mo.—Etling v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771 (Mo. 2003).

Wyo.—Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).

14 Ala.—Pickett v. Matthews, 238 Ala. 542, 192 So. 261 (1939).

15 Mass.—Pinnick v. Cleary, 360 Mass. 1, 271 N.E.2d 592, 42 A.L.R.3d 194 (1971).

W. Va.—Marcus v. Holley, 217 W. Va. 508, 618 S.E.2d 517 (2005).

16 Idaho—Twin Falls Clinic & Hospital Bldg. Corp. v. Hamill, 103 Idaho 19, 644 P.2d 341 (1982).

Mass.—Harlfinger v. Martin, 435 Mass. 38, 754 N.E.2d 63 (2001).

17 Ariz.—Rail N Ranch Corp. v. State, 7 Ariz. App. 558, 441 P.2d 786 (1968).

Ky.—Fireman's Fund Ins. Co. v. Bennett, 635 S.W.2d 482 (Ky. Ct. App. 1981), decision aff'd, 635 S.W.2d 475 (Ky. 1982) (overruled on other grounds by, Perkins v. Northeastern Log Homes, 808 S.W.2d 809 (Ky. 1991)).

18 Fla.—Fernandez v. Florida Ins. Guaranty Ass'n, Inc., 383 So. 2d 974 (Fla. 3d DCA 1980).

19 Fla.—Fernandez v. Florida Ins. Guaranty Ass'n, Inc., 383 So. 2d 974 (Fla. 3d DCA 1980).

Premises guest statute

Del.—Bailey v. Pennington, 406 A.2d 44 (Del. 1979).

20 Or.—Juarez v. Windsor Rock Products, Inc., 341 Or. 160, 144 P.3d 211 (2006).

21 Pa.—Friends of Pennsylvania Leadership Charter School v. Chester County Bd. of Assessment Appeals, 61 A.3d 354, 290 Ed. Law Rep. 181 (Pa. Commw. Ct. 2013), appeal granted, 621 Pa. 126, 74 A.3d 1024 (2013) and aff'd on other grounds, 101 A.3d 66, 310 Ed. Law Rep. 1007 (Pa. 2014).

Wyo.—Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).

Accrual

(1) A cause of action that has accrued is a vested right, which under the remedies clause the constitution may not be eliminated by subsequent legislation.

Pa.—Ieropoli v. AC&S Corp., 577 Pa. 138, 842 A.2d 919 (2004).

(2) The open courts provision of the constitution does not prevent the legislature from changing the law, which creates a right, but rather simply provides that if a right accrues under the law, the courts will be available to effectuate such right.

S.D.—Hancock v. Western South Dakota Juvenile Services Center, 2002 SD 69, 647 N.W.2d 722 (S.D. 2002).

Legitimate legislative purpose

The remedies clause of the constitution does not guarantee redress for every wrong but instead enjoins the legislature from eliminating those remedies that have vested at common law without a legitimate legislative purpose.

Minn.—Hoeft v. Hennepin County, 754 N.W.2d 717 (Minn. Ct. App. 2008).

Non-retroactive statute

Vt.—Carter v. Fred's Plumbing & Heating Inc., 174 Vt. 572, 816 A.2d 490 (2002).

Retroactive abolition of rights

Md.—Dua v. Comcast Cable of Maryland, Inc., 370 Md. 604, 805 A.2d 1061 (2002).

22 Md.—Dua v. Comcast Cable of Maryland, Inc., 370 Md. 604, 805 A.2d 1061 (2002).

23 **Constitutionality gauged by due process**

Fla.—Agency for Health Care Admin. v. Associated Industries of Florida, Inc., 678 So. 2d 1239 (Fla. 1996).

24 Neb.—Rogers v. Brown, 129 Neb. 9, 260 N.W. 794 (1935).

25 Ala.—Tolbert v. Tolbert, 903 So. 2d 103 (Ala. 2004).

S.D.—Behrns v. Burke, 89 S.D. 96, 229 N.W.2d 86 (1975).

26 Conn.—Mello v. Big Y Foods, Inc., 265 Conn. 21, 826 A.2d 1117 (2003).

Ky.—Bishop v. Manpower, Inc. of Cent. Kentucky, 211 S.W.3d 71 (Ky. Ct. App. 2006).

Mo.—Etling v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771 (Mo. 2003).

R.I.—Strynar v. Rahill, 793 A.2d 206 (R.I. 2002).

Program similar to workers' compensation

Minn.—Alcozer v. North Country Food Bank, 635 N.W.2d 695 (Minn. 2001).

Occupational Disease Act

Ill.—Segers v. Industrial Com'n, 191 Ill. 2d 421, 247 Ill. Dec. 433, 732 N.E.2d 488 (2000).

27 Pa.—Tsarnas v. Jones & Laughlin Steel Corp., 488 Pa. 513, 412 A.2d 1094 (1980).

Wis.—Mulder v. Acme-Cleveland Corp., 95 Wis. 2d 173, 290 N.W.2d 276 (1980).

28 Fla.—Sunspan Engineering & Const. Co. v. Spring-Lock Scaffolding Co., 310 So. 2d 4 (Fla. 1975).

29 Ala.—Grantham v. Denke, 359 So. 2d 785 (Ala. 1978).

30 Minn.—Tri-State Ins. Co. of Minnesota v. Bouma, 306 N.W.2d 564 (Minn. 1981).

31 Mont.—Trankel v. State, Dept. of Military Affairs, 282 Mont. 348, 938 P.2d 614 (1997).

32 Or.—Smothers v. Gresham Transfer, Inc., 332 Or. 83, 23 P.3d 333 (2001).

33 Or.—Smothers v. Gresham Transfer, Inc., 332 Or. 83, 23 P.3d 333 (2001).

34 Tex.—Texas Workers' Compensation Com'n v. Garcia, 893 S.W.2d 504 (Tex. 1995).

35 Miss.—Price v. Clark, 21 So. 3d 509 (Miss. 2009).

Mo.—Fisher v. State Highway Com'n of Mo., 948 S.W.2d 607, 70 A.L.R.5th 701 (Mo. 1997).

Or.—Schlesinger v. City of Portland, 200 Or. App. 593, 116 P.3d 239 (2005).

S.D.—Cromwell v. Rapid City Police Dept., 2001 SD 100, 632 N.W.2d 20 (S.D. 2001).

Reimposition of doctrine

Kan.—Brown v. Wichita State University, 219 Kan. 2, 547 P.2d 1015 (1976).

Government official involved

Applications of traditional or well-established governmental immunities from suit do not violate the open courts provision of state constitution; however, the legislature cannot immunize from suit both the government and the governmental official involved when the cause of action is based on a violation of state constitutional rights.

Md.—Espina v. Prince George's County, 215 Md. App. 611, 82 A.3d 1240 (2013), cert. granted, 438 Md. 142, 91 A.3d 613 (2014).

Reasonable exercise of police power

Election of remedies provision of Tort Claims Act, which statutorily extended immunity to acts of government employees acting within their official capacity, did not violate the open courts provision of state constitution; the restriction served to narrow the issues, reduce delay, and avoid duplicative litigation, which was a reasonable exercise of the police power in the interest of the general welfare.

Tex.—Williams v. Nealon, 394 S.W.3d 9 (Tex. App. Houston 1st Dist. 2012).

36 Ill.—Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972).

La.—Martinez v. Reynolds, 398 So. 2d 156 (La. Ct. App. 3d Cir. 1981).

37 Fla.—Cauley v. City of Jacksonville, 403 So. 2d 379 (Fla. 1981).

Or.—Clarke v. Oregon Health Sciences University, 343 Or. 581, 175 P.3d 418 (2007).

Wis.—Stanhope v. Brown County, 90 Wis. 2d 823, 280 N.W.2d 711 (1979).

Notice of claim requirement

Md.—Rios v. Montgomery County, 157 Md. App. 462, 852 A.2d 1005 (2004), judgment aff'd, 386 Md. 104, 872 A.2d 1 (2005).

38 Utah—DeBry v. Noble, 889 P.2d 428 (Utah 1995).

Amendment of act

Amendment to a state tort claims act which classified the operation of storm sewers as a governmental function protected by immunity was specifically authorized by a provision of the state constitution allowing abrogation of common law rights of action against municipalities and thus did not violate the open courts provision of the constitution.

Tex.—City of Tyler v. Likes, 962 S.W.2d 489 (Tex. 1997).

39 S.D.—Kyllo v. Panzer, 535 N.W.2d 896 (S.D. 1995).

40 Utah—Laney v. Fairview City, 2002 UT 79, 57 P.3d 1007 (Utah 2002) (holding modified on other grounds by, Moss v. Pete Suazo Utah Athletic Com'n, 2007 UT 99, 175 P.3d 1042 (Utah 2007)).

41 Tex.—City of Tyler v. Likes, 962 S.W.2d 489 (Tex. 1997).

42 S.D.—Oien v. City of Sioux Falls, 393 N.W.2d 286 (S.D. 1986).

43 Utah—DeBry v. Noble, 889 P.2d 428 (Utah 1995).

44 Minn.—State ex rel. Kane v. Stassen, 208 Minn. 523, 294 N.W. 647 (1940).

45 Conn.—Gentile v. Altermatt, 169 Conn. 267, 363 A.2d 1 (1975).

Fla.—Kluger v. White, 281 So. 2d 1 (Fla. 1973).

46 Fla.—Kluger v. White, 281 So. 2d 1 (Fla. 1973).

47 Conn.—Gentile v. Altermatt, 169 Conn. 267, 363 A.2d 1 (1975).

Fla.—Kluger v. White, 281 So. 2d 1 (Fla. 1973).

48 Del.—DuPont v. DuPont, 32 Del. Ch. 413, 85 A.2d 724 (1951).

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16D C.J.S. Constitutional Law § 2416

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Constitutional Law
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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

A. Guaranty of Access to Courts and Remedy for Injuries

§ 2416. Violation and infringement of guaranty

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

The constitutional guaranty insuring open courts and a remedy for injury should not be infringed; and any person who, or statute that, improperly interferes with the right of a person to seek remedy by action for any injuries violates the guaranty.

Any person or statute attempting to interfere unlawfully with the right of a person to seek remedy by action for any injuries to him or her in his or her person or property violates the constitutional guaranty.[1] It is a cardinal principle that the guaranty should not be infringed when another course is reasonably possible.[2] Congestion in the courts is not a ground for denying access to the courts.[3] In jurisdictions where the guaranty applies to the legislative branch of government as well as to the judiciary,[4] all statutes and ordinances which violate the provision are invalid.[5]

The guaranty is violated by a statute exempting charitable and nonprofit corporations from liability for their torts[6] and by various other statutes.[7] On the other hand, various statutes or other enactments have been held not to violate the constitutional guaranty,[8] such as a self-help repossession provision of the Uniform Commercial Code.[9]

Statutes requiring the arbitration of a dispute have been held to violate the constitutional guaranty in some jurisdictions[10] but not in others.[11]

The imposition of a tax on legal services is not violative of the right of access to the courts where the statute exempted from taxation pro bono legal services and government counsel appointed for indigents.[12] Similarly, the requirement that prospective plaintiffs pay any taxes owed before commencing with an action does not violate the right to access to the courts.[13]

The constitutional guaranty is not violated by a statute establishing a no-fault system of compensation for personal injuries[14] although a particular provision may deny the right of access to courts.[15]

Penalties.

In jurisdictions in which the constitutional guaranty insuring a remedy for injuries to person and property is held to be applicable to the legislative branch of government as well as to the judiciary,[16] penal clauses of statutes are void which are of so extreme a character as will intimidate the parties from resorting to the courts to test the validity of the statute.[17] A party must not be chilled from asserting a colorable claim by the fear of unwarranted sanctions.[18]

On the other hand, the guaranty is not abridged by a statute which fixes penalties for the refusal by insurance companies to pay losses.[19] The constitutional guaranty is not violated by a statute providing that a landowner appealing from the appraisers' award in condemnation proceedings may not recover interest on a verdict which is equal to, or less than, the award of the appraisers[20] or by various other statutes.[21]

Footnotes

1 Cal.—Eshelman v. Eshelman, 133 Cal. App. 2d 376, 284 P.2d 103 (2d Dist. 1955).

2 Ohio—Gustafson v. Buckley, 161 Ohio St. 160, 53 Ohio Op. 71, 118 N.E.2d 403 (1954).

3 U.S.—Ingram v. Richardson, 471 F.2d 1268, 17 Fed. R. Serv. 2d 177 (6th Cir. 1972).
Cal.—Weeks v. Roberts, 68 Cal. 2d 802, 69 Cal. Rptr. 305, 442 P.2d 361 (1968).

4 § 2413.

5 Minn.—Juster Bros. v. Christgau, 214 Minn. 108, 7 N.W.2d 501 (1943).

6 Kan.—Noel v. Menninger Foundation, 175 Kan. 751, 267 P.2d 934 (1954).

7 U.S.—Buck v. Harton, 33 F. Supp. 1014 (M.D. Tenn. 1940).
Instructions to jury
Statutory provisions which prohibited judge from instructing jury as to applicable law except on request of either party contravened constitutional mandates that judiciary fairly administer justice.
Miss.—Newell v. State, 308 So. 2d 71 (Miss. 1975).

8 Colo.—Hurricane v. Kanover, Ltd., 651 P.2d 1218 (Colo. 1982).
Fla.—Purdy v. Gulf Breeze Enterprises, Inc., 403 So. 2d 1325 (Fla. 1981).
Denial of retaliation by landlord
Or.—Marquam Inv. Corp. v. Beers, 47 Or. App. 711, 615 P.2d 1064 (1980).

9 W. Va.—Cook v. Lilly, 158 W. Va. 99, 208 S.E.2d 784, 15 U.C.C. Rep. Serv. 965 (1974).

10 Neb.—Kelley v. Benchmark Homes, Inc., 250 Neb. 367, 550 N.W.2d 640 (1996) (disapproved of on other grounds by, Webb v. American Employers Group, 268 Neb. 473, 684 N.W.2d 33 (2004)).
No reasonable alternative to suit provided
Fla.—Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc., 753 So. 2d 55 (Fla. 2000).

11 Utah—Deer Crest Associates I, LC v. Silver Creek Development Group, LLC, 2009 UT App 356, 222 P.3d 1184 (Utah Ct. App. 2009).

Voluntary waiver by contract

Va.—Mission Residential, LLC v. Triple Net Properties, LLC, 275 Va. 157, 654 S.E.2d 888 (2008).

12 Fla.—In re Advisory Opinion to the Governor, 509 So. 2d 292 (Fla. 1987).

13 Tex.—Central Appraisal Dist. of Rockwall County v. Lall, 924 S.W.2d 686 (Tex. 1996).

Tax refund class action

A statute requiring prospective class members to first file their tax refund claim with the Department of State Revenue before they could be included in a certified class in an action for a tax refund did not violate the state constitution's open courts provision as taxpayers were not completely denied access to the tax court but rather were merely required to present their claims first to the Department.

Ind.—Ziegler v. Indiana Dept. of State Revenue, 797 N.E.2d 881 (Ind. Tax Ct. 2003).

14 N.J.—Frazier v. Liberty Mut. Ins. Co., 150 N.J. Super. 123, 374 A.2d 1259 (Law Div. 1977).

N.Y.—Montgomery v. Daniels, 38 N.Y.2d 41, 378 N.Y.S.2d 1, 340 N.E.2d 444 (1975).

15 Fla.—Lasky v. State Farm Ins. Co., 296 So. 2d 9 (Fla. 1974).

16 § 2413.

17 Fla.—Florida East Coast Ry. Co. v. State, 79 Fla. 66, 83 So. 708 (1920).

18 Cal.—Miller v. R. K. A. Management Corp., 99 Cal. App. 3d 460, 160 Cal. Rptr. 164 (4th Dist. 1979).

No retaliation

State officials may not take retaliatory action against an individual designed either to punish the person for having exercised a constitutional right to seek judicial relief or to intimidate or chill the exercise of that right in the future.

U.S.—Gearin v. City of Maplewood, 780 F. Supp. 2d 843 (D. Minn. 2011).

19 Pa.—Hayes v. Erie Ins. Exchange, 493 Pa. 150, 425 A.2d 419, 14 A.L.R.4th 752 (1981).

20 U.S.—Feltz v. Central Nebraska Public Power & Irr. Dist., 124 F.2d 578 (C.C.A. 8th Cir. 1942).

21 **Reasonable attorney's fees**

Ind.—Hanninen v. Koch, 868 N.E.2d 1137 (Ind. Ct. App. 2007).

Okla.—Thayer v. Phillips Petroleum Co., 1980 OK 95, 613 P.2d 1041 (Okla. 1980).

Trial court discretion

A statute that mandates the imposition of attorney's fees and costs if the trial court, in its discretion, finds that plaintiff has not complied with a statutory requirement does not violate the "open courts" provision of the state constitution; trial courts retain the judicial power to determine whether a timely filed report satisfies the good faith effort requirement.

Tex.—Hightower v. Baylor University Medical Center, 348 S.W.3d 512 (Tex. App. Dallas 2011).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

A. Guaranty of Access to Courts and Remedy for Injuries

§ 2417. Conditions and restrictions on enforcement of rights and liabilities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

Reasonable conditions and restrictions governing the enforcement of rights do not abridge the constitutional guaranty insuring open courts and a remedy for injuries.

The legislature may impose reasonable conditions and limitations on the enforcement of rights without violating the constitutional guaranty that courts must be open and that there must be a remedy for injuries to person and property,[1] such as limitations on the time and location of activities pursuant thereto.[2] The right to access to courts is not absolute,[3] and while any restrictions must be liberally construed in favor of access,[4] where access to the courts is not essential to the exercise of a fundamental right, the legislature is free to restrict access to judicial process if there is rational basis for the restriction.[5] A litigant's access to the courts may be limited to preserve the courts' resources.[6] Any restriction on a litigant's access to the courts should be drawn narrowly.[7] To find a violation of the right to access the courts, it is not necessary for a statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult.[8]

The legislature may impose regulations and restrictions as to the manner in which a court, including even a constitutional court, may take jurisdiction;[9] and generally, the guaranty is not impinged by statutes reasonably limiting the time within which an action may or must be commenced[10] although certain statutes do infringe on the right and may not be applied.[11]

In this connection, a distinction has been drawn between statutes which operate to bar the cause of action before it ever accrued, so that no judicial forum was available to the aggrieved party, in contravention of the constitutional guaranty,[12] and those in which the injury occurred prior to the enactment of the statute, which merely served to shorten the time for bringing suit.[13] The right to access may be abridged by statutes regulating the venue of actions.[14]

Access to courts may not be conditioned on actual payment to one's attorney in a prior litigation.[15]

There is no constitutional right to access to courts to prosecute an action that is frivolous, harassing, abusive, or malicious,[16] and the courts can place restrictions on such access to prevent abuse of the judicial process, to avoid unnecessary delay in the prosecution of actions, and to guard against actions that are frivolous or malicious.[17]

Certain statutes and regulations restricting the discovery, availability, and use of evidence have been held not to violate a litigant's right to access to courts.[18]

Conditions precedent.

Statutes or municipal charters imposing conditions which must be fulfilled before a suit can be maintained do not violate the constitutional guaranty insuring open courts and a remedy for injuries to person and property,[19] as in the case of the requirement of a special procedure,[20] except where they result in an unreasonable abridgment of the right to obtain redress for injuries.[21] A trial court's requirement that a personal injury plaintiff pay costs imposed as a sanction for a mistrial prior to resetting the matter for a new trial does not violate the plaintiff's rights of access to the courts.[22] The payment of costs and restitution pursuant to a conditional guilty plea to violating disciplinary rules and statute may properly be made conditions precedent to a hearing on a petition for reinstatement of a suspended attorney.[23]

Medical malpractice.

The right of access to the courts, or to a remedy for injuries, is not violated by statutes which impose restrictions on the right of injured persons to recover for medical malpractice,[24] such as requiring the submission of such claims to a medical mediation panel as a condition precedent to the filing of malpractice claims in court,[25] but as to this point, there is authority to the contrary effect.[26] A statutory cap on damages recoverable in medical malpractice action does not violate the open courts provision of a state constitution[27] although there is authority to the contrary on this point as well.[28]

Statutes setting forth limitations of time for bringing the action do not violate such constitutional provisions.[29] However, other statutes setting forth limitations of time for bringing a medical malpractice action do violate such constitutional provisions.[30] A rational basis standard of review is applied in analyzing a challenge to a medical malpractice statute of repose on the basis that the statute violated the right of access to courts.[31]

CUMULATIVE SUPPLEMENT

Cases:

The statute requiring a medical-malpractice plaintiff to file an affidavit of merit stating that the plaintiff has obtained the written opinion of a legally qualified health care provider that the defendant breached the applicable standard of care and that such failure directly caused or contributed to cause the plaintiff's damages does not violate Missouri's open courts provision or the plaintiff's right to trial by jury and the principle of separation of powers under the Missouri Constitution. Mo. Const. art. 1, §§ 14, 22(a); Mo. Const. art. 2, § 1; Mo. Ann. Stat. § 538.225. Hink v. Helfrich, 545 S.W.3d 335 (Mo. 2018).

Arbitration proceeding in contractual dispute brought against annuity issuer by Consolidated Public Retirement Board (CPRB) and Investment Management Board (IMB) did not violate public's constitutional right of access to courts; date, time, and location of parties' arbitration proceedings were publicly docketed by court, final decision was unsealed by Supreme Court of Appeals, and there was no allegation that members of public ever sought to review final decision and were denied. W. Va. Const. art. 3, § 17. West Virginia Investment Management Board v. Variable Annuity Life Insurance Company, 820 S.E.2d 416 (W. Va. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Colo.—City and County of Broomfield v. Farmers Reservoir and Irrigation Co., 239 P.3d 1270 (Colo. 2010).
Ill.—In re Marriage of Earlywine, 2013 IL 114779, 374 Ill. Dec. 947, 996 N.E.2d 642 (Ill. 2013).
Md.—Blue v. Arrington, 221 Md. App. 308, 108 A.3d 602 (2015).
Unreasonable restriction prohibited
Wyo.—Kordus v. Montes, 2014 WY 146, 337 P.3d 1138 (Wyo. 2014).

2 U.S.—Seibert v. McCracken, 387 F. Supp. 275 (E.D. Okla. 1974).

3 Mont.—Boushie v. Windsor, 2014 MT 153, 375 Mont. 301, 328 P.3d 631 (2014).
N.D.—Bouchard v. Johnson, 555 N.W.2d 81 (N.D. 1996).

4 Fla.—Jackson v. Morillo, 976 So. 2d 1125 (Fla. 5th DCA 2007).
Issue preclusion
Neb.—Woodmen of World Life Ins. Soc. v. Peter Kiewit Sons' Co., 196 Neb. 158, 241 N.W.2d 674 (1976).
Policy of courts
Tex.—Texas Emp. Ins. Ass'n v. Dixson, 546 S.W.2d 124 (Tex. Civ. App. Beaumont 1977).
Utah—Ruffinengo v. Miller, 579 P.2d 342 (Utah 1978).

5 La.—Rhone v. Ward, 31 So. 3d 591 (La. Ct. App. 2d Cir. 2010), writ denied, 34 So. 3d 291 (La. 2010).

6 R.I.—State v. D'Amario, 725 A.2d 276 (R.I. 1999).
Vexatious litigator statute
A vexatious litigator statute, which imposes limitations on the conduct of persons who have habitually, persistently, and without reasonable grounds engaged in vexatious litigation conduct, does not violate the open courts provisions of the constitution where the statute bears a substantial relationship to the compelling public interest in curbing the illegitimate activities of vexatious litigators and is not unreasonable or arbitrary.
Ohio—Mayer v. Bristow, 91 Ohio St. 3d 3, 2000-Ohio-109, 740 N.E.2d 656 (2000).

7 Fla.—Holmes Regional Medical Center, Inc. v. Dumigan, 151 So. 3d 1282 (Fla. 5th DCA 2014).
Vexatious litigant
An injunction against repetitive and vexatious litigation under the All Writs Act should be narrowly tailored so as to preserve the right of access to the courts.
U.S.—Caldwell v. Pesce, 2015 WL 430382 (E.D. N.Y. 2015).

8 Fla.—Mitchell v. Moore, 786 So. 2d 521 (Fla. 2001).

9 Ind.—Square D. Co. v. O'Neal, 225 Ind. 49, 72 N.E.2d 654 (1947).

10 Mass.—Harlfinger v. Martin, 435 Mass. 38, 754 N.E.2d 63 (2001).
Ohio—Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co., 128 Ohio St. 3d 529, 2011-Ohio-1961, 947 N.E.2d 672 (2011).

Tex.—Stockton v. Offenbach, 336 S.W.3d 610 (Tex. 2011).

Statute of repose

(1) Statute of repose for statutorily created state-law securities claims does not violate state constitution's right-to-remedy provision.

U.S.—Fencorp, Co. v. Ohio Kentucky Oil Corp., 675 F.3d 933, 82 Fed. R. Serv. 3d 89 (6th Cir. 2012).

(2) An eight-year statute of repose for actions arising out of a "deficiency in the creation of an improvement to real property" did not violate state constitutional right to a remedy; the purpose of the statute of repose was to prevent potentially infinite liability in the building industry, which was an important government objective.

N.H.—Lennartz v. Oak Point Associates, P.A., 2015 WL 734335 (N.H. 2015).

Statute of limitations

Colo.—Cacioppo v. Eagle County School Dist. Re-50J, 92 P.3d 453, 189 Ed. Law Rep. 354 (Colo. 2004).

Ohio—Foster v. Wells Fargo Fin. Ohio, Inc., 195 Ohio App. 3d 497, 2011-Ohio-4632, 960 N.E.2d 1022 (8th Dist. Cuyahoga County 2011).

A.L.R. Library

Validity and construction of statute terminating right of action for product-caused injury at fixed period after manufacture, sale, or delivery of product, 30 A.L.R.5th 1.

11 Wyo.—Phillips v. ABC Builders, Inc., 611 P.2d 821 (Wyo. 1980).

Statute of repose

A 15-year statute of repose for actions involving a product liability claim violated the provision of the constitution guaranteeing a right to a remedy.

Ohio—State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

Health care liability claims.

Two-year statute of limitations for health care liability claims was unconstitutional as applied to patient who was a minor at the time of her treatment, and thus, statute tolling limitations until a minor reaches the age of 18 applied to patient's claims; limitations period violated the open courts provision of the state constitution.

Tex.—Montalvo v. Lopez, 2015 WL 1639580 (Tex. App. San Antonio 2015).

12 U.S.—Ellison v. Northwest Engineering Co., 521 F. Supp. 199, 32 U.C.C. Rep. Serv. 73 (S.D. Fla. 1981).

Deprivation of right before discovery of injury

(1) The legislature is precluded by the provision of the constitution guaranteeing the right to a remedy from depriving a claimant of such right before the claimant knew or should have known of his or her injury.

Ohio—State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

(2) An open courts provision protects a person from having his or her right to sue cut off by a legislative act before the individual has been afforded a reasonable opportunity to discover the wrong and bring suit.

Tex.—Hebert v. Hopkins, 395 S.W.3d 884 (Tex. App. Austin 2013).

Right of action arising before expiration of statute

A statute of repose for actions against land surveyors did not violate the constitution's remedy for wrongs provision by barring a litigant's right to sue before it arose, in a landowners' negligence action against a land surveyor, where such right arose before the statute expired.

Wis.—Castellani v. Bailey, 218 Wis. 2d 245, 578 N.W.2d 166, 117 A.L.R.5th 643 (1998).

13 Fla.—Purk v. Federal Press Co., 387 So. 2d 354 (Fla. 1980).

14 **Foreign corporations**

Application of a venue statute in manner as to bar some, but not all, plaintiffs from accessing courts despite the fact that courts possessed both subject matter and personal jurisdiction over the alleged cause of action would have violated open courts provision of state constitution.

Mo.—State ex rel. Neville v. Grate, 443 S.W.3d 688 (Mo. Ct. App. W.D. 2014), reh'g and/or transfer denied, (Sept. 2, 2014) and transfer denied, (Oct. 28, 2014).

15 Fla.—Tirone v. Tirone, 327 So. 2d 801 (Fla. 3d DCA 1976).

16 U.S.—State of Colo. ex rel. Colorado Judicial Dept. v. Fleming, 726 F. Supp. 1216 (D. Colo. 1989).

Vt.—Zorn v. Smith, 189 Vt. 219, 2011 VT 10, 19 A.3d 112 (2011).

Malicious actions

Public policy generally mandates free access to the courts; however, a party may forfeit that right if he or she abuses the judicial process by engaging in meritless litigation motivated by spite or ill will.
N.Y.—Vogelgesang v. Vogelgesang, 71 A.D.3d 1132, 899 N.Y.S.2d 272 (2d Dep't 2010).
Action by inmate
The constitutional right of access to the courts encompasses only an inmate's own reasonably adequate opportunity to file nonfrivolous legal claims challenging his convictions or conditions of confinement.
W. Va.—State ex rel. Anstey v. Davis, 203 W. Va. 538, 509 S.E.2d 579 (1998).
17 Tex.—Leonard v. Abbott, 171 S.W.3d 451 (Tex. App. Austin 2005).
Barring inmate's pro se petitions
Fla.—Jackson v. Florida Dept. of Corrections, 790 So. 2d 398 (Fla. 2001).
18 Wash.—Spratt v. Toft, 180 Wash. App. 620, 324 P.3d 707 (Div. 1 2014).
Identity of HIV-infected blood donor
U.S.—Doe v. American Nat. Red Cross, 790 F. Supp. 590 (D.S.C. 1992).
Identifying information of psychiatric patient
Conn.—Falco v. Institute of Living, 254 Conn. 321, 757 A.2d 571 (2000).
Evidence of voluntary intoxication to negate mens rea requirement
Ind.—Sanchez v. State, 749 N.E.2d 509 (Ind. 2001).
19 Wash.—McDevitt v. Harbor View Medical Center, 179 Wash. 2d 59, 316 P.3d 469 (2013).
Two-year condition precedent set forth in wrongful death statute
Wyo.—Robinson v. Pacificorp, 10 P.3d 1133 (Wyo. 2000).
Cost of litigation
The right of equal access to courts does not necessarily mean that a litigant has the right to engage in cost-free litigation.
Colo.—City and County of Broomfield v. Farmers Reservoir and Irrigation Co., 239 P.3d 1270 (Colo. 2010).
20 Neb.—Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).
21 Fla.—G.B.B. Investments, Inc. v. Hinterkopf, 343 So. 2d 899 (Fla. 3d DCA 1977).
Filing of affidavit
Statute requiring patient in medical malpractice action to attach affidavit of merit violated patient's right of access to court by imposing financial burden on patient to pay for professional services to obtain affidavit as condition of filing suit.
Okla.—Wall v. Marouk, 2013 OK 36, 302 P.3d 775 (Okla. 2013).
22 Wyo.—Terry v. Sweeney, 10 P.3d 554 (Wyo. 2000).
23 Tenn.—Brooks v. Board of Professional Responsibility, of Supreme Court of Tennessee, 145 S.W.3d 519 (Tenn. 2004).
24 U.S.—Hines v. Elkhart General Hospital, 465 F. Supp. 421 (N.D. Ind. 1979), judgment aff'd, 603 F.2d 646 (7th Cir. 1979).
Ariz.—Baker v. University Physicians Healthcare, 231 Ariz. 379, 296 P.3d 42 (2013).
Access to evidence
Statute which makes records and proceedings of hospital medical review committees privileged and nondiscoverable does not deprive medical malpractice plaintiff of his or her right to access to courts; it merely withholds from plaintiff a certain type of evidence which would otherwise be available.
Ga.—Eubanks v. Ferrier, 245 Ga. 763, 267 S.E.2d 230 (1980).
Recovery from collateral sources
Fla.—Pinillos v. Cedars of Lebanon Hospital Corp., 403 So. 2d 365 (Fla. 1981).
Good Samaritan Act
Utah—Hirpa v. IHC Hospitals, Inc., 948 P.2d 785 (Utah 1997).
Exception from tolling statute
Mo.—Wheeler v. Briggs, 941 S.W.2d 512 (Mo. 1997).
25 U.S.—Hines v. Elkhart General Hospital, 465 F. Supp. 421 (N.D. Ind. 1979), judgment aff'd, 603 F.2d 646 (7th Cir. 1979).
Ind.—Kranda v. Houser-Norborg Medical Corp., 419 N.E.2d 1024 (Ind. Ct. App. 1981).
Presuit notice
Statutory 90-day presuit notice requirement for medical malpractice action, as applied to the State, was a constitutionally valid statutory precondition for suit against the State.
Wash.—McDevitt v. Harbor View Medical Center, 179 Wash. 2d 59, 316 P.3d 469 (2013)

Arbitration

Md.—Piselli v. 75th Street Medical, 371 Md. 188, 808 A.2d 508 (2002).

26 Mo.—State ex rel. Cardinal Glennon Memorial Hospital for Children v. Gaertner, 583 S.W.2d 107 (Mo. 1979).

Okla.—Wall v. Marouk, 2013 OK 36, 302 P.3d 775 (Okla. 2013).

Wash.—Putman v. Wenatchee Valley Medical Center, P.S., 166 Wash. 2d 974, 216 P.3d 374 (2009).

27 Kan.—Miller v. Johnson, 295 Kan. 636, 289 P.3d 1098 (2012).

Neb.—Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc., 265 Neb. 918, 663 N.W.2d 43 (2003).

Nonarbitrary and reasonable

Utah—Judd v. Drezga, 2004 UT 91, 103 P.3d 135 (Utah 2004).

Noneconomic damages

Amended statutory cap on noneconomic damages awards in medical malpractice actions did not violate "certain remedy" provision of state constitution; impact of the statute was limited to a narrow class of those with noneconomic damages, Legislature had not imposed an absolute bar to recovery of noneconomic damages, but merely placed a limitation on the amount of recovery in order to effectuate the purpose of the Act, and the legislative reasons for the amendments to the Act were valid.

W. Va.—MacDonald v. City Hosp., Inc., 227 W. Va. 707, 715 S.E.2d 405 (2011).

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Validity, construction, and application of state statutory provisions limiting amount of recovery in medical malpractice claims, 26 A.L.R.5th 245.

28 Ariz.—Smith v. Myers, 181 Ariz. 11, 887 P.2d 541 (1994).

29 U.S.—Fields v. Legacy Health System, 413 F.3d 943 (9th Cir. 2005).

Ind.—Boggs v. Tri-State Radiology, Inc., 730 N.E.2d 692 (Ind. 2000).

S.D.—Peterson, ex rel. Peterson v. Burns, 2001 SD 126, 635 N.W.2d 556 (S.D. 2001).

Wis.—Aicher ex rel. LaBarge v. Wisconsin Patients Compensation Fund, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849 (2000).

Application to claim of minor

Mont.—Estate of McCarthy v. Montana Second Judicial Dist. Court, Silverbow County, 1999 MT 309, 297 Mont. 212, 994 P.2d 1090 (1999).

Condition not latent

Tex.—Earle v. Ratliff, 998 S.W.2d 882 (Tex. 1999).

30 **No knowledge of injury**

Ind.—Halbe v. Weinberg, 717 N.E.2d 876 (Ind. 1999).

Toll claim of minor

Md.—Piselli v. 75th Street Medical, 371 Md. 188, 808 A.2d 508 (2002).

Tex.—Weiner v. Wasson, 900 S.W.2d 316 (Tex. 1995).

No reasonable alternative provided

Ariz.—Duncan v. Scottsdale Medical Imaging, Ltd., 205 Ariz. 306, 70 P.3d 435 (2003).

Statute of repose

Ohio—State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

31 **No implication of fundamental rights warranting strict scrutiny**

N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

Action alleging injury to minor four years old

Mont.—Estate of McCarthy v. Montana Second Judicial Dist. Court, Silverbow County, 1999 MT 309, 297 Mont. 212, 994 P.2d 1090 (1999).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

B. Guaranties of Free Justice, Prompt Justice, Justice Without Prejudice, and Review

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Research References

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

B. Guaranties of Free Justice, Prompt Justice, Justice Without Prejudice, and Review

§ 2418. Guaranty of free justice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2320, 2321

The constitutions of many states guarantee free justice, but the guaranty does not confer a right to litigate entirely without expense.

A provision common to many state constitutions is the provision guaranteeing the right to justice without sale.[1] It is intended to prohibit gratuities or exactions given or demanded for the direct purposes of influencing the course of legal proceedings and to prevent the selling of justice by the sovereign.[2] As now construed, the guaranty does not confer the right to litigate entirely without expense,[3] but most state constitutions and rules of procedure recognize that courts must be open to all with legitimate disputes, not just those who can afford to pay fees to get in.[4] Moreover, the guaranty is aimed not merely against bribery and corruption but also against the imposition of unreasonable charges for the use of the courts[5] although the authorities are not entirely consistent in the application of this guaranty.[6]

The guaranty is infringed where the court grants an injunction and imposes as a condition to making it final that the plaintiff shall file a bond to indemnify the defendant against loss if the judgment be reversed on appeal.[7] The guaranty of free justice is not abridged by statutes providing that insurance companies vexatiously refusing to pay losses are liable for punitive damages and

attorney's fees,[8] or which authorize the consolidation of corporations contrary to the wishes of dissenting minority stockholders,[9] or which make the payment of workers' compensation the exclusive liability of an employer for work-related injuries.[10]

The guaranty of free justice is also not violated by a statutory prohibition against self-representation of corporations.[11] A statute allocating a percentage of each punitive damages award in the state to a state fund for the compensation of crime victims does not violate the guaranty of justice without purchase.[12]

Footnotes

1 Ky.—Com. ex rel. Tinder v. Werner, 280 S.W.2d 214 (Ky. 1955).
Miss.—Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (1954).

2 Ind.—Square D. Co. v. O'Neal, 225 Ind. 49, 72 N.E.2d 654 (1947).

3 Colo.—City and County of Broomfield v. Farmers Reservoir and Irrigation Co., 239 P.3d 1270 (Colo. 2010).
Vt.—State v. de Macedo Soares, 190 Vt. 549, 2011 VT 56, 26 A.3d 37 (2011).

4 Tex.—Griffin Industries, Inc. v. Honorable Thirteenth Court of Appeals, 934 S.W.2d 349 (Tex. 1996).

5 Fla.—Flood v. State, 95 Fla. 1003, 117 So. 385 (1928).

6 Guaranty with respect to taxes, see § 2420.

7 Wis.—City of Manitowoc v. Manitowoc & Northern Traction Co., 145 Wis. 13, 129 N.W. 925 (1911).

8 Mo.—Barber v. Hartford Life Ins. Co., 269 Mo. 21, 187 S.W. 867 (1916), rev'd on other grounds, 245 U.S. 146, 38 S. Ct. 54, 62 L. Ed. 208 (1917).

9 R.I.—Narragansett Elec. Lighting Co. v. Sabre, 50 R.I. 288, 146 A. 777, 66 A.L.R. 1553 (1929).

10 Wis.—Mulder v. Acme-Cleveland Corp., 95 Wis. 2d 173, 290 N.W.2d 276 (1980).

11 Wis.—Jadair Inc. v. U.S. Fire Ins. Co., 209 Wis. 2d 187, 562 N.W.2d 401 (1997).

12 Or.—DeMendoza v. Huffman, 334 Or. 425, 51 P.3d 1232 (2002).

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXIII. Right to Justice and Remedies for Injuries

B. Guaranties of Free Justice, Prompt Justice, Justice Without Prejudice, and Review

§ 2419. Guaranty of free justice—Costs and fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2317, 2322

Regulations requiring the payment of uniform and reasonable court costs and fees, or security for such disbursements, do not violate the constitutional guaranty of free justice.

Various statutes, requiring the payment of reasonable court costs and fees, or security for such disbursements, do not violate the constitutional provision[1] that justice shall be administered freely and without purchase.[2]

The guaranty, however, forbids the enactment of regulations which discriminate as to the payment of costs and fees between parties who before the law are entitled to the same remedy under the same conditions[3] or which impose unreasonable burdens.[4] A statute conditioning the benefits of probation and suspension of sentence on payment of costs and fees assessed as an incident to the prosecution and trial violates the constitutional guaranty.[5] On the other hand, a state's agreement to a recommendation that the State's primary witness in a capital murder prosecution be given a 10-year sentence for his participation in the murder offense in exchange for the witness making a substantial payment to the victim's family was held not to violate the guaranty where the sentence was within the statutory range.[6] However, a statute requiring the collection of fees in every type of civil suit filed and in every criminal case where costs, fines, or forfeitures are imposed, to be deposited in special fund for the support and counseling of victims of family violence, is unconstitutional where the statute's purpose is unrelated to the administration of justice.[7]

A statute providing for a justice of the peace to charge a fee for entering and trying any civil suit unconstitutionally encourages justice for sale.[8] The collection of jury fees, as a prerequisite to accepting the first motion to enter for filing and docketing in a pending action, did not violate state constitutional provisions that stated that the right to a jury trial was inviolate and that justice should be administered without sale, denial, delay, or prejudice.[9] The payment of an administrative penalty does not violate the open courts provision unless payment is a prerequisite to judicial review.[10]

Footnotes

1 Guaranty of free justice, generally, see § 2418.

2 N.H.—State v. Basinow, 117 N.H. 176, 371 A.2d 458 (1977).
Vt.—State v. de Macedo Soares, 190 Vt. 549, 2011 VT 56, 26 A.3d 37 (2011).
Purposes related to administration of justice
Fla.—Crist v. Ervin, 56 So. 3d 745 (Fla. 2010), as revised on reh'g, (Jan. 20, 2011).
Fee imposed did not violate free access clause of state constitution; fee supported ancillary court services where fee was expressly limited to use for administration of justice.
Ill.—Lipe v. O'Connor, 2014 IL App (3d) 130345, 380 Ill. Dec. 493, 8 N.E.3d 663 (App. Ct. 3d Dist. 2014).
Requirement that inmates pay filing fees for civil cases
Mo.—Bromwell v. Nixon, 361 S.W.3d 393 (Mo. 2012).
A.L.R. Library
Validity of law or rule requiring state court party who requests jury trial in civil case to pay costs associated with jury, 68 A.L.R.4th 343.

3 Tex.—National Equitable Soc. v. Alexander, 210 S.W. 602 (Tex. Civ. App. Austin 1919).
Exemption from bond requirement
Tex.—Mid-American Indem. Ins. Co. v. King, 22 S.W.3d 321 (Tex. 1995).
Class legislation as to costs and fees, see § 1255.

4 **Unreasonable financial barriers**
Tex.—City of Tyler v. Likes, 962 S.W.2d 489 (Tex. 1997).

5 Ala.—State v. Esdale, 253 Ala. 550, 45 So. 2d 865 (1950).

6 Mo.—Hutchison v. State, 150 S.W.3d 292 (Mo. 2004).

7 La.—Safety Net for Abused Persons v. Segura, 692 So. 2d 1038 (La. 1997).

8 W. Va.—State ex rel. Shrewsbury v. Poteet, 157 W. Va. 540, 202 S.E.2d 628, 72 A.L.R.3d 368 (1974).

9 Okla.—Barzellone v. Presley, 2005 OK 86, 126 P.3d 588 (Okla. 2005).

10 Tex.—Barshop v. Medina County Underground Water Conservation Dist., 925 S.W.2d 618 (Tex. 1996).

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B. Guaranties of Free Justice, Prompt Justice, Justice Without Prejudice, and Review

§ 2420. Guaranty of free justice—Taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2321

Conflicting views are taken by the authorities on the question of whether the guaranty of free justice is violated by statutes requiring the tender or deposit of taxes on demands or property in a suit; the imposition of a reasonable tax on litigation is consistent with the guaranty.

The courts have held that it is not a violation of the guaranty of free justice for the legislature to require payment of taxes as a condition precedent to an action questioning the amount of taxes due[1] or to the recovery of property sold for unpaid property taxes.[2] However, a statutory requirement that a taxpayer pay the previous year's real property assessment, which might possibly be disputed, as a condition for judicial review of a real property tax appeal violates the open courts provision because it imposes an unreasonable financial barrier to court access.[3] Such provision is also violated by a statute which permits a tax commissioner discretionary authority to grant or withhold approval of a taxpayer's request to substitute property or other indemnification for a required appeal bond.[4] A tax statute that imposes a bond or lien requirement on suits for judicial review of assessments made under the statute does not violate the constitutional provision.[5]

The imposition of a reasonable tax on litigation does not constitute a violation of the guaranty of free justice.[6]

Footnotes

1 **Payment of undisputed amounts required prior to challenge**
Tex.—Central Appraisal Dist. of Rockwall County v. Lall, 924 S.W.2d 686 (Tex. 1996).
Payment of deficiency prior to appeal
Utah—Maryboy v. Utah State Tax Com'n, 904 P.2d 662 (Utah 1995).

2 S.D.—Heikes v. Clay County, 526 N.W.2d 253 (S.D. 1995).

3 Tex.—Central Appraisal Dist. of Rockwall County v. Lall, 924 S.W.2d 686 (Tex. 1996).

4 W. Va.—Frantz v. Palmer, 211 W. Va. 188, 564 S.E.2d 398 (2001).

5 Ill.—McLean v. Department of Revenue of State of Ill., 184 Ill. 2d 341, 235 Ill. Dec. 3, 704 N.E.2d 352 (1998).

6 Fla.—Farabee v. Board of Trustees, Lee County Law Library, 254 So. 2d 1 (Fla. 1971).

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B. Guaranties of Free Justice, Prompt Justice, Justice Without Prejudice, and Review

§ 2421. Guaranty of prompt justice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2323

It is judicial policy to promote the speedy end of litigation, and prompt justice is guaranteed by various constitutions. The guaranty is subject to the legitimate exercise of the police power and to reasonable regulations governing the commencement and prosecution of actions.

It is judicial policy to promote the speedy end of litigation,[1] and the right to justice, without delay, is guaranteed by various constitutions.[2]

The constitutional guaranty of a speedy trial expressly applicable to one accused of crime[3] has been held inapplicable to civil matters.[4] In criminal matters, the constitutional requirement that justice be administered without delay is addressed to the prosecution and to the court.[5]

The guaranty of the right to justice, without delay, is derived from Magna Carta[6] and should not be infringed[7] unless no other course is reasonably possible.[8] Although there is no general principle that fixes the exact time within which a trial must be had,

the constitutional mandate that justice be administered without delay means that there must be no unreasonable delay after a formal complaint has been filed against the defendant.[9]

Where the guaranty restrains the legislative branch of government as well as the judiciary,[10] statutes and ordinances which violate the guaranty of prompt justice are null and void.[11] Nevertheless, the right to prompt justice is subject to the legitimate exercise of the police power of the State in the interest of the general welfare[12] although the State may not, under the police power, deprive a person of his or her constitutional right to justice without delay when the legislation reasonably is not within the scope of police regulations.[13]

Not every delay violates the constitutional guaranty which declares that justice be administered without delay,[14] and reasonable regulations in regard to the commencement and prosecution of suits do not violate the guaranty[15] nor does the proper exercise of discretionary power to stay proceedings.[16] The guaranty is not violated by emergency legislation vesting the control of banks in the governor and forbidding actions against the banks without his consent.[17]

On the other hand, the guaranty is violated by various statutes,[18] such as a mortgage moratorium act extending the time for answering in foreclosure actions and postponing the time of trial and judgment,[19] a statute providing that no trial on the fairness of an assessment for condemned land will be had until 12 months have expired after the completion of the project for which the land was condemned,[20] or a similar statute deferring trial on a condemnation award.[21] Whether the State has violated the constitutional mandate of administering justice without delay depends on the circumstances of each case.[22] A state constitutional guarantee of the administration of justice without delay does not require that a judgment creditor "speedily and without delay" apply for any particular remedy within any particular time.[23] The constitutional guarantee that justice be freely and speedily administered neither explicitly nor implicitly prohibits legislative modification of common law actions.[24]

Footnotes

1 Ga.—American Tire Co. v. Creamer, 132 Ga. App. 781, 209 S.E.2d 240 (1974).
Timely resolution of claims
Colo.—Huizar v. Allstate Ins. Co., 952 P.2d 342 (Colo. 1998).
Speedy remedy for every wrong
Me.—Irish v. Gimbel, 1997 ME 50, 691 A.2d 664 (Me. 1997).

2 Ala.—McCollum v. Birmingham Post Co., 259 Ala. 88, 65 So. 2d 689 (1953).
Del.—Lanova Corp. v. Atlas Imperial Diesel Engine Co., 44 Del. 593, 64 A.2d 419 (Super. Ct. 1949).
Fla.—Wilson v. Lee Memorial Hospital, 65 So. 2d 40 (Fla. 1953).
Ind.—Matter of Tina T., 579 N.E.2d 48 (Ind. 1991).
Ky.—Com. ex rel. Tinder v. Werner, 280 S.W.2d 214 (Ky. 1955).
Me.—State v. Bilynsky, 2008 ME 33, 942 A.2d 1234 (Me. 2008).
Miss.—Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (1954).
Neb.—Sullivan v. Storz, 156 Neb. 177, 55 N.W.2d 499, 34 A.L.R.2d 1142 (1952).
N.H.—In re Martin, 160 N.H. 645, 8 A.3d 60 (2010).
Ohio—Armstrong v. Duffy, 90 Ohio App. 233, 47 Ohio Op. 233, 61 Ohio L. Abs. 187, 103 N.E.2d 760 (7th Dist. Columbiana County 1951).
Okla.—Pierce v. State ex rel. Dept. of Public Safety, 2014 OK 37, 327 P.3d 530 (Okla. 2014).
Or.—State v. Harberts, 331 Or. 72, 11 P.3d 641 (2000).
Pa.—Com. ex rel. Duff v. Keenan, 347 Pa. 574, 33 A.2d 244 (1943).
R.I.—Lemoine v. Martineau, 115 R.I. 233, 342 A.2d 616 (1975).
S.D.—Simons v. Kidd, 73 S.D. 41, 38 N.W.2d 883 (1949).

Tenn.—Maury County v. Porter, 195 Tenn. 116, 257 S.W.2d 16 (1953).
Va.—Whitt v. Com., 61 Va. App. 637, 739 S.E.2d 254 (2013).

3 Discussed in C.J.S., Criminal Law §§ 829 to 875.

4 R.I.—Thayer Amusement Corp. v. Moulton, 63 R.I. 182, 7 A.2d 682, 124 A.L.R. 236 (1939).

5 Or.—State v. Harberts, 331 Or. 72, 11 P.3d 641 (2000).

6 N.C.—Veazey v. City of Durham, 231 N.C. 357, 57 S.E.2d 377 (1950).

7 Ky.—Campbell v. Hulett, 243 S.W.2d 608 (Ky. 1951).
Tenn.—Maury County v. Porter, 195 Tenn. 116, 257 S.W.2d 16 (1953).

8 Pa.—Kelly v. Brenner, 317 Pa. 55, 175 A. 845 (1934).

No excuse for delay

Mont.—State ex rel. Carlin v. District Court of Fifth Judicial Dist. in and for Jefferson County, 118 Mont. 127, 164 P.2d 155 (1945).

9 Or.—State v. Harberts, 331 Or. 72, 11 P.3d 641 (2000).

10 § 2413.

11 Okla.—State ex rel. Roth v. Waterfield, 1933 OK 546, 167 Okla. 209, 29 P.2d 24 (1933).

Anti-injunction statutes

Ala.—Rochell v. City of Florence, 236 Ala. 313, 182 So. 50 (1938).

12 S.C.—State ex rel. Zimmerman v. Gibbes, 171 S.C. 209, 172 S.E. 130 (1933), aff'd, 290 U.S. 326, 54 S. Ct. 140, 78 L. Ed. 342 (1933).

13 Okla.—State ex rel. Roth v. Waterfield, 1933 OK 546, 167 Okla. 209, 29 P.2d 24 (1933).

14 Ill.—Trustees of Schools of Tp. No. 37 v. First Nat. Bank of Blue Island, 49 Ill. 2d 408, 274 N.E.2d 56 (1971).
La.—State v. Cornelison, 304 So. 2d 758 (La. Ct. App. 4th Cir. 1974).

15 Neb.—Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).
Or.—State v. Robinson, 3 Or. App. 200, 473 P.2d 152 (1970).

16 Del.—Lanova Corp. v. Atlas Imperial Diesel Engine Co., 44 Del. 593, 64 A.2d 419 (Super. Ct. 1949).

17 S.C.—State ex rel. Zimmerman v. Gibbes, 171 S.C. 209, 172 S.E. 130 (1933), aff'd, 290 U.S. 326, 54 S. Ct. 140, 78 L. Ed. 342 (1933).

18 **Deferral of court appearance by member of legislature**

R.I.—Lemoine v. Martineau, 115 R.I. 233, 342 A.2d 616 (1975).

19 Okla.—State ex rel. Roth v. Waterfield, 1933 OK 546, 167 Okla. 209, 29 P.2d 24 (1933).

20 Tenn.—Maury County v. Porter, 195 Tenn. 116, 257 S.W.2d 16 (1953).

21 Ky.—Com. ex rel. Tinder v. Werner, 280 S.W.2d 214 (Ky. 1955).

22 Or.—State v. Harberts, 331 Or. 72, 11 P.3d 641 (2000).

23 Mont.—Emery v. State, Dept. of Public Health and Human Services, Child Support Enforcement Div., 286 Mont. 376, 950 P.2d 764 (1997).

24 Idaho—Struhs v. Protection Technologies, Inc., 133 Idaho 715, 992 P.2d 164 (1999).

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B. Guaranties of Free Justice, Prompt Justice, Justice Without Prejudice, and Review

§ 2422. Guaranty of justice without prejudice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2310 to 2325

Some constitutions guarantee justice without prejudice and insure to all a trial without bias or prejudice.

The constitutions of some states, while not expressly guaranteeing justice without prejudice in so many words, provide in substance and effect that justice without prejudice must be available to all persons.[1] In some jurisdictions, the constitutions expressly insure the right to justice without prejudice.[2]

The guaranty of justice without prejudice insures a fair and impartial trial[3] before an unbiased and unprejudiced judge[4] or tribunal[5] notwithstanding that there is no express statutory provision specifying prejudice of the judge as a ground of disqualification.[6]

Footnotes

1 Minn.—Payne v. Lee, 222 Minn. 269, 24 N.W.2d 259 (1946).

2 Okla.—Thayer v. Phillips Petroleum Co., 1980 OK 95, 613 P.2d 1041 (Okla. 1980).

3 Mo.—Jones v. Pennsylvania R. Co., 353 Mo. 163, 182 S.W.2d 157 (1944).

N.Y.—Gino v. Gino, 105 N.Y.S.2d 333 (Dom. Rel. Ct. 1951).

4 Minn.—Payne v. Lee, 222 Minn. 269, 24 N.W.2d 259 (1946).

Satisfaction of appearance of justice

U.S.—In re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955); Siefert v. Alexander, 608 F.3d 974 (7th Cir. 2010).

5 U.S.—Wall v. American Optometric Ass'n, Inc., 379 F. Supp. 175 (N.D. Ga. 1974), judgment aff'd, 419 U.S. 888, 95 S. Ct. 166, 42 L. Ed. 2d 134 (1974) and judgment aff'd, 419 U.S. 888, 95 S. Ct. 166, 42 L. Ed. 2d 134 (1974).

Okla.—Williams v. State, 89 Okla. Crim. 95, 205 P.2d 524 (1949).

6 **Remedy by appeal inadequate**

Minn.—Payne v. Lee, 222 Minn. 269, 24 N.W.2d 259 (1946).

Prohibitive clauses of constitution as self-executing, see § 131.

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§ 2423. Right of review of judicial proceedings

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2324

The right of review of judicial proceedings is, in the absence of a constitutional guaranty, entirely statutory.

In the absence of any constitutional guaranty, the right to a review of judicial proceedings is purely statutory.[1] Accordingly, where such right is not so guaranteed, it is discretionary with the legislature to determine whether a review may be had and in what cases, in what courts, and in what manner a statutory right of review may be exercised.[2]

In some states, the right of review is expressly guaranteed by the constitution,[3] in which case acts of the legislature wholly denying the right are unconstitutional,[4] and any restrictions thereon should be liberally construed in favor of the right.[5]

Where the constitution does not define the specific limits of appellate jurisdiction, however, this may be abridged or extended by the legislature as public policy may require.[6] Moreover, whether the right of review is or is not guaranteed, it is within the province of the legislature to enact reasonable regulations governing the exercise of the right.[7]

A guaranty of the right to be heard in all civil cases in the court of last resort is satisfied if the party is given recourse to that court by proceedings in error or otherwise even though no remedy by appeal is provided,[8] and such guaranty is not violated by court rules refusing to permit oral arguments on appeal.[9]

A constitutional right to be heard in a court of last resort is not violated by a statute authorizing certain administrative action to be reviewed in error proceedings only.[10]

Guaranty of open courts and remedy.

According to some decisions, the constitutional guaranty providing for open courts and insuring a remedy for injuries to person and property[11] confers a right of appeal from an inferior to an appellate court,[12] in the absence of unfulfilled conditions precedent on the part of the person seeking the review.[13] Other authorities, however, have held that the guaranty is satisfied by a trial in a court of competent jurisdiction in which the right to a trial by jury is afforded in proper cases[14] and does not require that an appeal be afforded in every case.[15] At any rate, the guaranty insuring open courts is not invaded when an appeal is allowed by statute.[16]

The constitutional guaranty providing for open courts and insuring a remedy for injuries does not entitle one to a new trial as a matter of right.[17] A litigant's day in court is not limited to the trial court but embraces as well his or her day in an appropriate reviewing court,[18] and such day in court is not complete until the motion for rehearing is determined by the appellate court.[19]

Footnotes

1 Pa.—In re Saxony Const. Co., 178 Pa. Super. 132, 113 A.2d 342 (1955).
Constitutional standards
There is no constitutional right to appeal, but where appellate review is provided by statute, proceedings must comport with constitutional standards.
Tenn.—Arroyo v. State, 434 S.W.3d 555 (Tenn. 2014).
Criminal and civil proceedings
While most often arising in context of criminal proceedings, the right to judicial review based on a complete record of all evidence on which judgment is based is equally applicable to civil proceedings.
La.—Tingle v. American Home Assur. Co., 40 So. 3d 1169 (La. Ct. App. 3d Cir. 2010), writ denied, 48 So. 3d 1095 (La. 2010) and writ denied, 48 So. 3d 1095 (La. 2010) and writ denied, 48 So. 3d 1095 (La. 2010) and writ denied, 48 So. 3d 1096 (La. 2010).

2 **Arbitration**
Fla.—Wilson v. Prudence Mut. Cas. Co., 197 So. 2d 300 (Fla. 1967).
Administrative agency rulings
A provision in a state constitution governing the absolute right to appeal only applies to appeals from the district court's exercise of its original jurisdiction; it does not apply to appeals to the court of appeals from the district court's decision on appeal from an administrative agency ruling.
N.M.—Wakeland v. New Mexico Dept. of Workforce Solutions, 2012-NMCA-021, 274 P.3d 766 (N.M. Ct. App. 2011).

3 La.—Darouse v. Mamon, 201 So. 2d 362 (La. Ct. App. 1st Cir. 1967).
Neb.—Emry v. Lake, 181 Neb. 568, 149 N.W.2d 520 (1967).

4 **Bond as condition precedent**
Ill.—Hamilton Corp. v. Alexander, 53 Ill. 2d 175, 290 N.E.2d 589 (1972).

5 Fla.—Lehmann v. Cloniger, 294 So. 2d 344 (Fla. 1st DCA 1974).

6 Tenn.—City of Chattanooga v. Keith, 115 Tenn. 588, 94 S.W. 62 (1906).

7 Ill.—Olson v. Chicago Transit Authority, 1 Ill. 2d 83, 115 N.E.2d 301 (1953).
Limiting time for appeal

La.—Something Irish Co. v. Rack, 333 So. 2d 773 (La. Ct. App. 1st Cir. 1976).

8 **Proceedings in error followed by appeal**

Neb.—Nickel v. School Bd. of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

9 Neb.—In re Motor Carriers, 181 Neb. 697, 150 N.W.2d 275 (1967).

10 Neb.—Emry v. Lake, 181 Neb. 568, 149 N.W.2d 520 (1967).

Administrative appeals

A party who has the opportunity to present his or her case at an administrative hearing and then appeal the decision of the administrative agency to a court is not deprived of the right to petition the government and of access to the courts.

Haw.—Lee v. United Public Workers, AFSCME, Local 646, AFL-CIO, 125 Haw. 317, 260 P.3d 1135 (Ct. App. 2011), as corrected, (Aug. 4, 2011).

11 Constitutional guaranties, generally, see §§ 2410 to 2417.

12 **Refusal of court to sign bill of exceptions**

Fla.—State v. Cornelius, 100 Fla. 292, 129 So. 752 (1930).

13 **Bond requirement**

Ala.—McLendon v. State Dept. of Revenue, 395 So. 2d 71 (Ala. Civ. App. 1980), writ denied, 395 So. 2d 73 (Ala. 1981).

Del.—State ex rel. Caulk v. Nichols, 267 A.2d 610 (Del. Super. Ct. 1970), order aff'd, 281 A.2d 24 (Del. 1971).

14 Ind.—Lake Erie & W.R. Co. v. Watkins, 157 Ind. 600, 62 N.E. 443 (1902).

15 Ga.—Smith v. Duggan, 153 Ga. 463, 112 S.E. 458 (1922).

Review by certiorari only

Ill.—McGinnis v. McGinnis, 289 Ill. 608, 124 N.E. 562 (1919).

16 Ky.—Gratzer v. Gertisen, 181 Ky. 626, 205 S.W. 782 (1918).

17 Miss.—Mississippi Baptist Hospital v. Holmes, 214 Miss. 906, 56 So. 2d 709 (1952).

18 Cal.—People v. Becker, 108 Cal. App. 2d 764, 239 P.2d 898 (2d Dist. 1952).

19 Ariz.—State v. Pudman, 65 Ariz. 197, 177 P.2d 376 (1946).

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